

No. 11037

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JAMES H. COLLINS, SIDNEY FISCHGRUND and
CHRISTOPHER E. SCHIRM,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

(In ~~Two~~ Volumes)

VOLUME II

(Pages 305 to 600, Inclusive)

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division

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(Testimony of John McEvoy)

equipment broke. In December, 1938, when I first became acquainted with some of these men, I was told that the well had been completed in the Torrance Field, but no copies of any telegrams were shown to me that were sent to Salt Lake. I do not remember Collins having shown me any telegram that said how much the initial production was. At the time I bought my stock I think Siens told me that the company was earning about a half a cent a share at that time. I took his word for it but I do not recall whether or not I took out a pencil and figured out how it was earning a half a cent a share. I worked on Union Associated deal about three months, and I had been out at the Torrance Field twice before that. It was called a "hot spot", meaning that there was a lot of [83] activity there. I saw a map of the Torrance Field while I was in the Plymouth deal and this map showed the oil wells spotted on it. I never did see the wells of the Plymouth Company. I never saw No. 2 being drilled. I believe No. 2 came in around the end of February. I was in the office at the time and I talked with Collins, Murphy, Siens and Davis, and I think Millener was there but I wouldn't say that, but I think Siens and Davis were down at the well practically all night about the time that it came in. When the well came in there was plenty of excitement around their office and they were talking about the well having come in. I was interested because I owned stock myself. The most I ever owned was about 15,000 shares, for which I paid prices up to, I think, $3\frac{1}{2}$ or 4 cents a share. I resold them. Everything I got for the stock over and above the price that I paid for it I kept myself, and did not turn it over to Collins, Gordon, or to any of the other defendants. Even though I believed the statements that were

(Testimony of John McEvoy)

made to me, I did sell the stock because I had a right with Collins and Murphy to purchase some more. If the well was producing 350 barrels a day I did not know that the earnings on such a well were more than I was actually paying for the stock because Siens and Davis said that the money for drilling the well, which was advanced by Laçy to Plymouth, had to be repaid first. This morning I said that I understood that the Union Associated had a 50 per cent interest in the well, but that it was subject to the repayment for the cost of the well. The Union Associated Mines Company issued literature on that. I think Government's Exhibit No. 3 is one of the letters on that.

(At this point, Mr. Blue read Government's Exhibit 3, in evidence, as follows:)

[PLAINTIFF'S EXHIBIT NO. 3]

R. R. Bray,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY

Telephone Wasatch 2130

Suite 526 Utah Oil Bldg.

Salt Lake City, Utah

January 6, 1939

To the stockholders of the Union Associated Mines Co.:

Since our last letter, your Company has completed its No. 1 well in the Torrance Field. To December 31, 2,000 barrels have been produced and shipments are being made to the Standard Oil Company of California. This continuous production points to a dividend in a few months, and we, therefore, suggest that any certificates

(Plaintiff's Exhibit No. 3)

which are not in the owner's name, be sent in immediately for transfer.

The future of the Company looks promising. A contract has been entered into which provides for the drilling of well No. 2 in the Torrance Field located between well No. 1 and another producing well. The contract provides that the Union Associated will exchange 635,000 shares of treasury stock for half interest in production, after deducting usual land owners royalty. The Plymouth Oil Co. will pay all costs of drilling until production is secured. The costs of drilling (not to exceed \$37,500.00) will then be taken from 80% of oil production; after which the Union Associated and Plymouth Oil Co. will divide 50-50.

Operations at well No. 2 have been started by erecting a derrick. Necessary machinery to complete the well will be moved on in due course.

In addition to the above, a contract has been entered into whereby the Union Associated will acquire a 40-acre lease in Section 2, Township 25 South, Range 18 East in the North Kern County District, in exchange for 235,000 shares of treasury stock. The Kern County area is exciting much interest at the present time. The 40 acres joins land now controlled by the General Petroleum Company. It will not be necessary for your Company to drill this block of ground until the area has been more definitely proven by other drilling.

The foregoing is a continuation of the policy of your Directors to build up the assets of the company by acquiring oil land in proven and semi-proven area.

(Plaintiff's Exhibit No. 3)

The officers of the Union Associated Mines Co. intend to file application for relisting the stock on the Salt Lake Stock Exchange as soon as the necessary papers are completed.

UNION ASSOCIATED MINES CO.
J. H. Morgan, Secretary.

P. S.: If you are the owner of stock not in your name, please do not fail to have your stock transferred to your own name and send in your correct address.

[Endorsed]: Securities and Exchange Commission. Docket D 515. Commission's Exhibit No. 225. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters; by Garnett.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 3 Identification. Date Jul. 6, 1944. No. 3 in Evidence. Date Jul. 14, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

[84]

(Witness continuing)

After hearing that letter read, it refreshes my recollection that the interest the Union Associated had in No. 2 well was a 50 percent interest in the net production after the cost of drilling the No. 2 well. It was my understanding that that was the deal that was on the first well, too (Tr. 561), but I do not know whether I told other people that. I still believe that was the understanding. Siens and Davis told me that; that is my recollection. I told that to Mr. Smith and to everyone else.

(Testimony of John McEvoy)

It is not my recollection that the Union Associated had a 50 per cent gross interest in the first well without any charge against it for drilling or participating cost. (Tr. 562) I never knew otherwise. I did not know that Union Associated had anything to do with the Factory Center site, embracing 72 acres, with a 25 per cent interest in it; or in a lease at Lomita, although I think I did hear something about the latter. I did not get any literature when I went out to sell this stock, but I relied upon Siens, Davis, Collins and Murphy for my information. I think I first talked to Gordon in February, 1939. Besides Mr. Smith, I sold Union Associated stock to Mr. Hampton, and repeated to him what had been told to me by the various persons; that the well was producing approximately 350 barrels a day, and that they expected to declare a dividend in the next month or two, and that they expected the stock to be listed also within the next month or two. I think that's about all. [85] I do not think I told him what interest the Union Associated had in the well. He knew that. He had bought stock before from some brokerage house. I happened to go to Hampton because I think he called Davis for some information and then Davis asked me to contact Hampton. He said he thought that he had a couple of other friends that might be interested, and I think I told Hampton at that time what the assets of the Union Associated were, in that they had this contract with the Plymouth Oil Company and that they were attempting to obtain some other acreage in Devil's Den, and they expected to continue on drilling down in Torrance for the time being. I believe I told him that Union Associated had a 50 per cent interest in the production after drilling costs were paid. I also sold to two of his friends, Mr. Peet and Mr. Wil-

(Testimony of John McEvoy)

liams, to whom Hampton introduced me. I told Williams the same thing that I had told Hampton although I am not clear whether I told him anything about the Devil's Den ownership. I did not tell him about the Factory Center site. I do not think I showed him any literature, or newspaper clippings, although I may have. Mr. Siens gave me some newspaper clippings but I do not have them now.

Cross-Examination

By Mr. Cannon:

I bought some stock from Collins at or near the price he was paying Mr. Siens for it and I also bought some stock directly from Plymouth, and paid Davis for it up in the Plymouth offices. I did not have an office there but used the facilities of that office as everybody did who was interested in Union Associated Mines stock. I did not have a telephone there myself, but I used that telephone in contacting my people, the same as Collins, Siens, or anyone [86] else did. I met Morgan in the Plymouth Oil office once or twice; once when he came there with an application for the listing of the stock on the Salt Lake Exchange. Then I think he came there another time with Barclay. I do not think I talked to Morgan and he was not present at the time any of the statements which I have made were made as to the production of the well. I knew that Murphy, as a matter of fact, was an even partner with Collins in this contract. I think it was in December, 1938, that I first heard that the stock was going to be listed on the San Francisco Exchange. I know at one time they showed me a letter that had been received from the San Francisco Stock Exchange. I was shown the letter of which the photostat copy that you now show

(Testimony of John McEvoy)

me is the copy, dated January 11, 1939, but I cannot say when I first saw that letter. (Tr. 574)

(The document referred to was marked Defendants' Exhibit D and received in evidence, and read as follows:)

[DEFENDANTS' EXHIBIT D]

Secretary's Office

SAN FRANCISCO MINING EXCHANGE

327 Bush Street, San Francisco

Via Air Mail

January 11, 1939.

Mr. R. R. Bray, President,
Union Associated Mines Company,
Suite 526, Utah Oil Building,
Salt Lake City, Utah.

Dear Sir:

We have received numerous inquiries concerning the operations of your company in the oil fields of California, many of them from stockholders and prospective investors in San Francisco.

Although your securities are not now listed, we understand that you intend to apply for listing on the Salt Lake Stock Exchange. Some of our broker-members have asked me to write to you, suggesting that you also list on the San Francisco Mining Exchange on account of the interest in the market for Union Associated Mines on the Pacific Coast and on account of the fact that the California fields are the scene of your company's operations.

(Defendants' Exhibit D)

We are taking the liberty of enclosing one of our listing applications, in the event your directors should choose to extend the market for your securities to Pacific Coast communities. While you are preparing your listing and registration papers for the Salt Lake Stock Exchange, it would be a simple matter to make an extra copy to cover your listing here.

We believe that the company would benefit greatly by broadening the market through listing in San Francisco and providing convenient trading facilities for Pacific Coast investors.

Very truly yours,

Frank J. Carter

Frank J. Carter, Secretary.

FJC:JC.

ENCL:1.

[Endorsed]: Case No. 15229-Cr. U. S. vs. Collins et al. Defts. Exhibit D in Evidence. Date Jul. 12, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Witness continuing)

The book called "My Scrap Book" is Siens' scrap book, and I saw it around the office from January until March, 1939, and I think I read it and relied on the things said in it, but I do not know that I used the scrap book to find out details as to the activities in the stock and other matters therein referred to, but I believe I did.

(The document referred to was marked for identification as Defendants' Exhibit E.)

(Testimony of John McEvoy)

(Witness continuing) [87]

I think I read the circular letters in here which are form letters now in evidence, dated September 29, 1938, at the time I was there, and I relied upon the statements therein contained. I also saw the one of January 6, 1939, which is a form letter, and I relied upon those statements. While I was there I think I saw letters that came in from Morgan to Siens. Siens, Collins and I occupied the same front office. I do not think Siens did his dictating in the same office where we were working. I do not know where he dictated. I never heard him dictate anything.

Re-Direct Examination

By Mr. Manster:

Mr. Joseph Murphy had an interest in Collins' contract. Murphy was selling Union stock. I believe I saw Morgan on two occasions at the Plymouth Oil Company offices. Once he came there in connection with a relisting of the stock on the Salt Lake Stock Exchange. I do not think I ever had any conversation with Morgan.

Recross-Examination

By Mr. Blue:

Mr. Gordon and Mr. Davis sent me to Paradena to see these women. It was not Mr. Gordon and Mr. Siens who sent me there.

(Witness excused.)

It was then stipulated that a group exhibit of 10 photocopies of letters on the stationery of J. A. Barclay & Company, addressed by Barclay to Collins, might be introduced in evidence, and that they were voluntarily produced by Collins to the Securities and Exchange Commission before the indictment return. [88]

Mr. Cannon: Let them go in. As far as I am concerned, I only reserve the objection as far as Mr. Morgan and all other defendants are concerned that it is hearsay as to them.

The Court: All right, the exhibit may be received.

(The documents referred to were marked Plaintiff's Exhibit No. 26, and received in evidence.) (Tr. 591)

MISS MATHILDA M. KLINGER

called as a witness by the plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Mathilda M. Klinger and I live in Pasadena, and in 1938 and in early 1939 I was secretary to Miss Grace T. Walker, who was in charge of the McCormick estate in Southern California with winter quarters in Pasadena and summer quarters in Santa Monica. I, together with Miss Walker, Miss McLane and Miss Davis, bought some Union Associated Mines Company stock. Miss McLane and Mr. Gordon were acquainted. I first heard of Union Associated through Miss McLane and purchased stock in that company through Miss Walker. Our first purchase was in October, 1938. I made the purchases for them all, that is, I bought it for Miss Walker, and we bought ours from Miss Walker, but I

(Testimony of Miss Mathilda M. Klinger)

handled the transaction. We bought 40,000 shares and paid \$1,500.00 for it by cashier's check delivered to Mr. Adkisson. Miss McLane brought Mr. Adkisson down and introduced me to him as Mr. Gordon's secretary, and I delivered the \$1,500.00 check to Mr. Adkisson at the McCormick estate in Santa Monica. Of the 40,000 shares I took 4,000 shares for \$150.00, Miss Davis took 4,000 shares, Miss McLane took 5,333 shares, and Miss Walker took the balance. The stock certificates were delivered to us in March, 1939. [89] After the initial purchase, we purchased some more stock through John McEvoy, in January, 1939. Miss Davis and I had a conversation with him in Pasadena.

Q. What, if anything, was said by Mr. McEvoy to you with relation to the Union Associated Mines Company or the Plymouth Oil Company?

Mr. Blue: If the Court please, I will object on the ground that it calls for hearsay. It is incompetent. The only evidence being here that Mr. McEvoy when he called on people, acted as an independent contractor. These defendants are not bound by anything that he did.

The Court: You may answer.

Mr. Blue: Exception. And, if the Court please, without the necessity of restating the objection, it is understood as to all conversations this witness had with Mr. McEvoy and that the same objection will be understood to have been made, the objection overruled, and exception noted. (Tr. 599)

(Witness continuing)

McEvoy said that the first well had been drilled and it was coming in at the rate of about 200 barrels a day:

(Testimony of Miss Mathilda M. Klinger)

that they were selling it at about \$1.05 per barrel to the Standard Oil Company, and that they were making good money and they hoped soon to drill another well; that the Plymouth Oil Company were drilling the well on a 50-50 basis with the Union Associated Mines, with Plymouth Oil Company paying the expenses of drilling. McEvoy said that the Union Associated Mines Company was earning 2½ cents a share and there were 1,400,000 shares of common stock outstanding, no other indebtedness; and that they were going to drill another well which, if it was successful, should bring in just as much oil as the other well did. McEvoy said that they were hoping to get the stock relisted on the Stock Exchange, and that they had [90] made an application, and hoped within a week or ten days to have it relisted; that it had been listed at one time and had been retired because the mine was idle. I do not know how many conversations I had with McEvoy, but I know he called several times and I talked to him on the telephone several times. He called to sell more stock. After he called to say that the second well had been drilled, and that it was producing about 300 barrels a day, he said that as soon as the stock was listed on the Exchange it would probably go to 50 cent a share, and that the Plymouth Oil Company was interested in it because of the investment and they would do what they could to help push the stock up. He said Plymouth Oil Company had an investment of about \$30,000.00 in the well. I made another purchase of 3,000 shares in two lots, 2,500 shares in January and 500 shares in March (Tr. 603) at 4 cents, all from Mr. McEvoy. Miss Davis purchased 1,000 shares and Miss Walker purchased 15,000 shares, all at 4 cents a share.

(Testimony of Miss Mathilda M. Klinger)

(By stipulation, Plaintiff's Exhibit No. 27, a cancelled check dated January 7, 1939, payable to John McEvoy in the amount of \$100.00, drawn by Mathilda M. Klinger, was received in evidence; and Plaintiff's Exhibit No. 28, a check dated March 1, 1939, payable to John McEvoy in the amount of \$20.00, signed by Mathilda M. Klinger; and Plaintiff's Exhibit No. 29, stock certificates, one numbered 4114 of Union Associated Mines for 2,500 shares in the name of Mathilda M. Klinger, and another one numbered 4115 for 500 shares, in the names of Mathilda M. Klinger, each dated February 8, 1939, were offered and received in evidence, with the following understanding:)

Mr. Blue: * * * The same stipulation, subject, of course, to the running objection as to hearsay as to all these transac- [91] tions with McEvoy. (Tr. 605)

(Witness continuing)

As secretary for the McCormick estate in 1938 or 1939, the mail coming into the office was brought into the office in Pasadena by the gate man, and at Santa Monica by the chauffeur who went down to the post office for it, and I distributed it to whomsoever it was addressed. As a stockholder of the Union Associated Mines Company I received a dividend upon my stock, and the document which you hand to me appears to be a printed copy of a letter dated August 1, 1939, and a duplicate of Exhibit 6 which is now in evidence, was received by me at or about or shortly after its date.

(The document referred to is marked Plaintiff's Exhibit No. 30 for identification.)

(Testimony of Miss Mathilda M. Klinger)

(Witness continuing)

I received Exhibit 30 through the mail.

In March, 1939, I received the certificates for the first purchase that I made in this stock. I do not have those certificates now because in April they were returned to Mr. Gordon for the return of the money paid for them, which was \$1,500.00, and that covered the stock purchased by the 4 ladies. Prior to the receipt of the \$1,500.00 I called Gordon's office over the phone and asked for Mr. Gordon [92] and he was not there, and I asked for his secretary, and I talked with someone who said he was the secretary. I do not know whether I subsequently talked to Mr. Gordon, but I remember that I delivered Miss Walker's message and the money was returned in about a week or ten days by Mr. Gordon, for the original purchase, \$1,500.00.

Cross-Examination

By Mr. Blue:

The document which you show me bears my signature and the signatures of Miss Walker, Miss McLean and Miss Davis.

(Document referred to was marked Defendants' Exhibit F, and was received in evidence.)

(Witness continuing)

I met Mr. Adkisson and Mr. McEvoy but not Mr. Siens and I do not recall having met Gordon, Fischgrund or Schirm, but I met Collins one time. He came with McEvoy, but did not sell me anything. The last time I bought I gave McEvoy a \$20.00 check for 500 shares at 4 cents a share. I was taking a flyer to make it an even

(Testimony of Miss Mathilda M. Klinger)

3,000 shares. I knew that when I purchased stock in an oil venture that it was a gamble. When I first bought stock and put \$150.00 in it and gave that money to Adkisson, Adkisson did not tell me anything about it. I got my information from Miss McLean. (Tr. 612) When I bought this stock first, I knew that I had a guarantee from Gordon that if I wanted my money back I could get it; but I did not get any guarantees from McEvoy. When I requested Gordon to repay the money, I received it in the form of a cashier's check. (Tr. 613) After I received that check I returned the stock certificates that I had received. So far as any transaction that I had with Gordon was concerned, personally, all I had to do was to ask him for the money and I got it back. I did not tell him that any one had made any mis- [93] representations to me. I do not recall that either Mr. Gordon or Mr. Adkisson told me anything personally, when I purchased this stock from Gordon.

Re-Direct Examination

By Mr. Evans:

I made my second purchase through Mr. McEvoy before the return of the \$1,500.00 to me. Mr. McEvoy was accompanied by Mr. Collins on one visit, and that was my only meeting with Collins. It was after the purchase of the second block of stock that I met Collins, but Collins did not participate in my discussion with Mr. McEvoy. Collins sat out in the car.

Recross-Examination

By Mr. Blue:

I was just introduced to Collins. I do not recall when McEvoy talked with me, he explained to me that the No. 1

(Testimony of Miss Mathilda M. Klinger)

well of the Plymouth Oil Company gave to the stockholders of Union Associated Mines a 50 per cent overriding interest without any cost on the drilling of the well. And I do not recall that he told me there was any distinction between No. 1 well and No. 2 well.

GRACE T. WALKER,

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Grace T. Walker. I was formerly employed by the McCormick estate, and Miss Klinger who has just testified, worked under my direction. In the fall of 1938 I purchased certain stock of Union Associated Mines Company. Of the 40,000 shares that we all purchased, I got 26,000 shares [94] and the rest of the 40,000 shares was taken by Miss Klinger, Miss Davis and Miss McLean. I did not see Gordon when the stock was offered to us because I was not in town. I met John McEvoy twice, once in Pasadena and the other in Santa Monica. I had a conversation with him.

Mr. Blue: I will object to that, if the Court please. Just a moment, Miss Walker. I will object on the ground that it is hearsay as to all these defendants, and it is incompetent. There is no foundation laid justifying any conversations had between this witness and Mr. McEvoy.

The Court: The witness may answer.

Mr. Blue: Exception, and the same objection will go to all her testimony with Mr. McEvoy. (Tr. 619)

(Testimony of Grace T. Walker)

(Witness continuing)

First McEvoy recommended to us that we get our money back on the first purchase and buy a second time, to buy more because the Plymouth Oil Company had taken a 50 per cent interest, and they would naturally want to get their money back, and the first well was producing 200 barrels a day; and in the next conversation about it he said they were making 300 and it was $2\frac{1}{2}$ per cent, and that they expected they would get 50 cents a share for it, and since the Plymouth Company wanted this stock they would certainly boom the stock so it would go up, so that they would get back their 50 per cent. He said that the stock had formerly been registered at Salt Lake City but it had gone off and they were expecting to have it registered at the time. I telephoned him many times trying to find out but I never found out whether it ever was registered again. I think something was said by him as to the number of Union Associated shares that were outstanding at the time, but I do not remember what it was. McEvoy told me at one time that well No. 1 produced 200 barrels, and the [95] next time I saw him he said it was 300.

Mr. Evans: It is stipulated, your Honor, by and between counsel for the defendants and the prosecution that Exhibit No. 31 may be received in evidence at this time. I wish to read Exhibit No. 31 to the jury at this time.

Mr. Blue: You had better have it marked first.

(The document referred to was marked Plaintiff's Exhibit No. 31 and received in evidence.)

Mr. Evans: Exhibit No. 31 is upon the letterhead of F. V. Gordon, bearing the date February 3, 1939.

(Testimony of Grace T. Walker)

Mr. Blue: If the Court please, before it is read I would like to have the record show an objection is made on behalf of all defendants other than Mr. Gordon as to the admissibility of this letter on the ground that it is hearsay.

The Court: All right.

Mr. Blue: Exception. (Tr. 622)

(At this point, Exhibit No. 31 was read, and is as follows:)

[PLAINTIFF'S EXHIBIT NO. 31]

F. V. GORDON

Oil Development

612 Subway Terminal Building

Los Angeles, California

Michigan 2151

February 3rd, 1939

Grace T. Walker
1400 Hillcrest Ave.
Pasadena, California

Dear Mrs. Walker:

I understand that you desire the Union Associated Mine stock distributed as shown on the accompanying letter, if so please sign the letter so that we can have the stock transferred in Salt Lake City.

This stock may not be returned here until about the 16th of February, but the dividend which will be declared on or about the 15th will reach you whether or not the stock is actually in your possession. Should you

(Plaintiff's Exhibit No. 31)

desire any more of this stock we can arrange to get it for you through the bearer McEvoy and I am sure that the stock will be valuable in the near future.

I have been ill for the past two weeks and regret that I have not seen you but hope that I may have the pleasure upon my return from Texas about February 25th.

Please give my best wishes to Miss McLean.

Sincerely yours,

Fred V. Gordon

Fred V. Gordon

FVG'JB

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 31 in Evidence. Date Jul. 12, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

On the stipulation of counsel, Government Exhibit No. 32 was offered and received in evidence, consisting of 15 stock certificates numbered 4336 to 4350, inclusive, all in the name of Grace T. Walker and issued by Union Associated Mines Company under date of March 9, 1939. (Tr. 623)

(Witness continuing)

The document which you have shown me, and marked Government's Exhibit No. 33, for identification, being a letter [96] dated March 2, 1939, was received by me on or about the date it bears. I suppose it came through Miss Klinger who handled my mail, but I do not remember whether or not I received it through the mail.

(Testimony of Grace T. Walker)

Cross-Examination

By Mr. Blue:

Mr. McEvoy advised me to get my money back on the first purchase I made. I do not remember whether he said why I was to do that, or not. I took his advice and believed what he told me and got my money back. I do not remember when well No. 2 came in, but I remember they drilled two wells. He did not tell me that well No. 2 had come in for 300 barrels.. I do not remember that. When I bought my second stock, Mr. McEvoy told me that it could be purchased on that same guarantee that Gordon had given me on my first block, but I did not get any written guarantee from McEvoy, but I had gotten a written guarantee from Mr. Gordon on the first purchase. I got that written guarantee from Mr. Adkisson on Mr. Gordon's behalf, and it is in evidence as Defendants' Exhibit B. I did not ask McEvoy for a written guarantee. I allowed Miss Klinger to deal with Mr. McEvoy and what Miss Klinger told me I relied upon.

(Witness excused.)

MISS MATHILDA M. KLINGER,

recalled as witness by and on behalf of the Government, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Evans:

I remember Government's Exhibit No. 33. It came through the mail was was delivered on or shortly after the date of Exhibit 33. [97]

MRS. MARGARET FLORENCE PERRI,

called as a witness by and on behalf of the Government,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

I live in Salt Lake City and was employed by the defendant John H. Morgan from November, 1938, until the end of December, 1939, as his stenographer and worked for him during that entire period. I was the only young lady employed by Morgan at that time. By reference to the minutes of Union Associated Mines Company, it appears that I was on March 3, 1939, appointed the transfer agent of the Union Company, and as transfer agent I transferred the old stock that was either mailed or brought in, and cancelled it, and made the necessary notations, and filled out the new stock and either mailed it or gave it back to the person to whom it was to be given. Those were part of my duties. I remember that certain printed stockholder letters were sent to the stockholders of Union Associated Mines Company. The printed letter dated August 1, 1939, marked Government's Exhibit No. 30 for identification, is a duplicate or a replica of a stockholder's letter which came to our office during the period of my employment, and after it was received at our office I mailed them to the stockholders according to a list furnished to me by Mr. Morgan. I addressed the envelopes for each letter and enclosed the letter, stamped the envelopes and put them in the mail chute. I personally deposited those letters in the mail chute, with the names and addresses as I have testified. That procedure was followed in connection with Exhibit No. 30, I suppose, but I do not remember distinctly. Let-

(Testimony of Mrs. Margaret Florence Perri)

ters of the kind like Exhibit No. 30 were mailed to those stockholders who were living outside of Salt Lake City, by me. [98]

Q. It has been testified in this case, Mrs. Perri, that the document which is marked Government's Exhibit 30 for identification was received at Santa Monica, California, by M. M. Klinger. I will ask you whether or not you can now state whether Exhibit No. 30 was deposited in the United States mails by you?

Mr. Blue: Now, just a moment. I object to the form of the question, if the Court please. It is definitely asking for the conclusion of the witness. Also, it is leading, and there is no foundation laid for the question as asked.

The Court: She may answer.

Mr. Blue: Exception.

A. I don't remember Miss Klinger's name.

* * * * *

Mr. Blue: It is certainly a highly suggestive question.

The Court: All right, she may answer.

A. It was deposited by me. (Tr. 634-635)

(Witness continuing)

Government's Exhibit No. 33 bears my signature. I typed it and signed it and then I put it in an addressed envelope, stamped it, and dropped it in the chute. This was done on or about March 22, 1939.

Mr. Evans: Now, at this time, your Honor, I wish to renew my offer for the receipt in evidence of Government's No. 30.

(Testimony of Mrs. Margaret Florence Perri)

Mr. Blue: If the Court please, at this time I wish to object to the offer on the ground they are entirely irrelevant * * * I therefore contend that these letters are immaterial and incompetent for any purpose.

* * * * *

The Court: Objection overruled.

Mr. Blue: Exception.

Mr. Evans: Exhibit 30 is received in evidence, your Honor? [99]

The Court: Yes.

(The document heretofore marked Plaintiff's Exhibit No. 30 was received in evidence.)

Mr. Evans: Now, your Honor, I wish also to offer in evidence Exhibit No. 33, the last letter under discussion with this witness.

The Court: All right.

Mr. Blue: Now, if the Court please, in addition to the grounds of the objections both to Exhibit 30 and 33, I wish to add this further objection, that they are hearsay as to each and every defendant and there is no foundation laid and they are therefore incompetent. There is no showing that these defendants had anything to do with the mailing of the letter except the defendant Morgan.

The Court: Objection overruled. Note an exception.

(The document heretofore marked Plaintiff's Exhibit No. 33, was received in evidence.) (Tr. 637-638) [100]

(Witness Perri temporarily excused.)

HAROLD V. DODD,

a witness called by and on behalf of the Government,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is Harold V. Dodd and I am a Deputy State Oil and Gas Supervisor and Petroleum Engineer, and have been in my official position for about three years. I examine all the available geological information, Government reports, well records, and use this information in connection with the drilling, maintenance, and abandonment of oil wells in Kern, Tulare, and Inyo counties. Reports of production are required by individuals or companies drilling wells, setting forth each calendar month beginning during the month following that in which the well started to produce, and in these reports they must identify the well, its location, the amount of oil produced, the amount of water, the number of days during the month in which the well produced, and must give the number of wells that were idle during the month, and other information. (Tr. 642). I was served a subpoena to produce the production records with reference to Lube Oil Company Gordon well, drilled in Section 2, township 25 south range 18 East, Kern County, California, but there are no such production records. The well was spudded in on November 26, 1936.

Q. By Mr. Manster: Can you tell us to what depth that well was drilled?

Mr. Cannon: I will object to that, if the Court please. It has no bearing on the issues in this case and could have no bearing, primarily because of the fact that it antedates any period laid in this indictment. (Tr. 644) [101]

(Testimony of Harold V. Dodd)

Mr. Manster: The materiality of the evidence we wish to produce is this: According to this lease from Gordon and his wife and others, his interest in this particular property was leased to one William Millener on December 29, 1938, according to Exhibit No. 24 in evidence. Millener, on January 5, 1939, leased this particular property or assigned the interest in the lease that he acquired from Gordon to the Union Associated Mines Company in return for a block of 235,000 shares which is proved in the record.

Now, we want to show, according to the allegations of the indictment—

Mr. Cannon: Just a moment. I will object to counsel making the statement on the ground that it has no probative value. What occurred in 1936,—your Honor will recall that when he made the statement in his opening statement as to what he intended to prove regarding the Devil's Den lease, at that time your Honor ordered it stricken out, I think, on Mr. Blue's objection. At least I know Mr. Blue made an objection to it, and it has no value here.

Mr. Manster: I will show the materiality in this fashion, Judge. The indictment alleges that it was a further part of said scheme and artifice that the defendants would lease and assign and cause to be leased and assigned unproven and undeveloped properties claimed by defendants to be of value to said corporation and secure for themselves from said corporation 235,000 shares of the stock of said corporation.

Now, we maintain that a dry hole was drilled in this particular section in 1936 and 1937, and that Mr. Gordon knew at that time that that property was undeveloped and

(Testimony of Harold V. Dodd)

unproven by virtue of that dry hole, and that was at the time that he transferred or he assigned his interest in that property to Mr. Millener. [101a]

Mr. Cannon: May I offer this suggestion, if the Court please? It is not a question of what the value of the lease was in 1936 that is in issue here. It is a question as to what value, if any, there was to the lease at the time of the assignment of Gordon to Millener and Millener to the company.

Mr. Manster: Precisely, but we contend that as of December 29, 1938, by virtue of that dry hole that had been drilled just three-quarters of a mile south of the 40 acres which Gordon transferred to Millener, that Gordon knew that property was unproven and would be unproductive because of the existence of that dry hole that had been drilled on it. (Tr. 644, 645, 645a) [101b]

Mr. Cannon: If the Court please, in speaking of the scienter that Mr. Manster refers to, I merely make this inquiry to make the point of my objection. How could what Gordon knew in 1936 be attributed to the rest of these defendants at all in view of the fact that the prosecution sought to limit this conspiracy, not to 1936, but to June, 1938, a year and a half or two years after this well, as he says, was spudded in, and, I suppose, uncompleted? It could not have any bearing upon the issues either under the indictment as to any of the defendants nor under the indictment as to specific defendants, other than Gordon.

The Court: Well, only to this extent, they knew that ground had no value.

Mr. Cannon: If they knew it.

Mr. Manster: That is the point.

Mr. Cannon: But there is no evidence that they did.

The Court: They can show by this witness.

(Testimony of Harold V. Dodd)

Mr. Cannon: You do not contend that the defendants had anything to do with the spudding of this well other than Gordon?

Mr. Manster: No.

Mr. Cannon: Then I object on the ground—

Mr. Manster: That the defendants knew by virtue of this assignment to Millener and to the Union Associated Mines Company in exchange for this 235,000 shares of stock, they knew the nature of this land with regard to its productive qualities for oil. This is allegation of an indictment which we are endeavoring to prove.

The Court: All right, go ahead.

Mr. Cannon: May we have an exception to all the testimony offered and an objection and an exception deemed to have been taken to it all? [102]

The Court: Yes. (Tr. 646-647)

(Witness continuing)

The well was drilled to a depth of 4270 feet on March 4, 1937, and operations were suspended on April 28, 1937. There were no production reports of oil filed in connection with this well. This particular well is slightly less than three-quarters of a mile from the Northeast Quarter of the Northwest Quarter of Section 2, Township 25 South, Range 18 East, M. D. B. and M. (Tr. 648), which last described tract is 40 acres in extent. I examined it on June 29, 1944. I did not make any examination on this tract between December, 1938, to December, 1939. There are no records in our office indicating the production of any oil or gas during the period 1938 and 1939, from Section 2, Township 25 South, Range 18 East.

(Testimony of Harold V. Dodd)

Cross-Examination

By Mr. Blue:

I have been with the State Board of Oil and Gas something over 22 years, and during that time I have seen a lot of oil fields brought in in California. There have been cases where oil fields have been brought in that were three-quarters of a mile from wells that have been drilled and found dry, but I would not know whether there were a lot of them. I remember the Shark Tooth field, an extension of the Round Mountain field in Kern County. I recall that the producing well that discovered that field was about a quarter of a mile away from a well that had been drilled and found dry. (Tr. 652) I imagine there are dry holes drilled to a shallow depth on lands on which they are finding wells now in the Buena Vista field. A good many dry holes were drilled on the Tejon Range field before they drilled a producing well. I do not know whether it is a mile, a half a mile, or two miles, [103] between the dry holes and the well that produced oil. I would not know how many wells, according to our records, have been drilled on what is known as the Devil's Den area, but I do know a great many wells have been drilled up there, in what we call the old Devil's Den producing area, somewhat south of this particular land. I do know that there are some small producing oil wells at the present time in what is called the Devil's Den area. I do not know whether or not the General Petroleum Company owns the 40 acres adjoining the land described to me by Mr. Manster. I did not look it up. I know the Pos Creek field. There are a great many wells there. The whole country east of Bakersfield field is precarious drilling and there are many dry holes in and around there, and directly

(Testimony of Harold V. Dodd)

alongside of these dry holes there are producing wells (Tr. 655), and to the average person the structure appearance of the land is no different outwardly where the wells are producing oil and the property that is dry. I know of the Kettleman hills area. It is divided into three sections, the north dome, the middle dome, and the south dome. No production has been found on the south dome, but I would say that there were four or five dry holes drilled there, but not more than two or three to any considerable depth. The Ohio Oil Company drilled one dry hole there. There have been dry holes drilled in the middle dome of Kettleman Hills. The whole field is abandoned now, and approximately 5 or 6 wells have been drilled there by the major companies. The north dome of Kettleman Hills is one of the finest fields in the world, and they drilled a number of dry holes there, but they did not have the equipment to get deep enough to find the oil and that was the reason for those dry holes; in other words, they stopped drilling at 4,000 or 5,000 feet. One of those old wells was drilled be- [104] tween 1912 and 1914, I think, and would have gotten commercially productive between 6,000 and 7,000 feet. It is possible that if this Devil's Den well that was drilled to 4270 feet had gone deeper, they might have gotten a producing well. I have an A. B. in geology, but I have not actually practised geology since I got out of college. In my job with the State I have to study the geology and check up the structures and elevation because we have to approve and shut off the water and all that sort of thing. (Tr. 658) I have never taken up leases myself or produced any oil; nor have I drilled any oil well, but I have owned a little stock in an oil company, but never had anything to do with the management. To a very limited extent, I have bought

(Testimony of Harold V. Dodd)

stock on the theory that I felt the company had a good play in a given section and then I got my fingers burned. I never monkey with wild cat deals. I do not think that by just drilling a particular well in the Devil's Den area to a depth of 4270 feet, at which depth drilling was suspended, that a 40 acre piece of ground three-quarters of a mile away would necessarily be valueless. You would have to take into consideration other factors.

Cross-Examination

By Mr. Cannon:

The drilling of a dry hole in an area three-quarters of a mile away from a particular spot would not necessarily condemn that land. A year or so ago I condemned as non-productive and as having no value for oil a certain part of the property in the Round Mountain area, and thereafter the very land which I had said had no value as oil land was leased by the Texas Company at a bonus of \$324.00 an acre, but it was just production acreage, and they gave up the land without drilling. [105]

Re-Direct Examination

By Mr. Manster:

What is known generally as the Devil's Den area embraces about two or three townships and embraces 12 to 18 sections, a section being 640 acres. (Tr. 665) At any time during 1938 the highest number of wells producing in that area was 20.

Q. Can you tell us what was the total amount of barrel production from those 20 wells?

Mr. Cannon: I will object to that as being immaterial altogether. (Tr. 666)

(Testimony of Harold V. Dodd)

The Court: Well, what we are primarily interested in is the value of these 40 acres, and all you attempt to show first by the witness is that this well has been drilled within three-quarters of a mile away.

Mr. Manster: That is right.

The Court: And therefore we were to draw whatever inference we could from that as to the value of this land, and subsequently, on cross examination, the witness said that it wouldn't make any difference.

Mr. Manster: We contend that is some indication of the probability of finding oil. If a dry hole is drilled within three-quarters of a mile in a particular area, we contend it is some indication as to whether or not oil in productive quantities would be produced.

Now, it has been brought out here that certain areas, certain acreage in the Devil's Den area have produced oil, and we would like to show just what the production was in 1938 and 1939.

Mr. Cannon: Then I will add to my objection heretofore given that this is an attempt to impeach his own witness. [106]

Mr. Manster: No, I am not impeaching him at all. I am merely asking for his records.

The Court: Go ahead.

Mr. Cannon: Exception.

The Witness: 9,094 barrels. (Tr. 667-668)

(Witness continuing)

That would be an aggregate production of 9,094 barrels for the entire year of 1938. During the year 1939 there were 14 producing wells with an aggregate production of 4,724 barrels, or about .92 barrels per day.

(Testimony of Harold V. Dodd)

Recross-Examination

By Mr. Blue:

All of these wells ranged from less than 400 to 500 or 600 feet. These figures I have given include the wells to the north and some of that production is coming from around 2,500 feet, but that is only from two of these wells. Usually the gravity of the oil is higher, the deeper the well is.

Re-Direct Examination

By Mr. Manster:

I had a degree in geology from Stanford University and I am a qualified petroleum engineer; and for two years after my graduation I spent two years on graduate work and got the degree of Petroleum Engineer at Stanford. I have been practicing my profession since April 1, 1922, during the whole of that time I have been employed by the State, starting out as a junior engineer and then advanced to Deputy State Oil and Gas Supervisor. I examined the well records and available Government reports on the Devil's Den area, and made a visit to the area recently, although I have gone through the area many times. I have formed an opinion as to the qualities of the Devil's Den area with respect to [107] the production of oil, and I think it is highly improbable that it will contain oil or gas in commercial quantities, so far as section 2 is concerned.

Mr. Blue: My objection goes to all, if the Court please, and an exception noted. (Tr. 674)

(Witness continuing)

In addition to the drilling of a dry hole, the considerations that would be taken into account, bearing upon the

(Testimony of Harold V. Dodd)

possibilities of finding oil in adjacent territory to the dry hole, would be the general character of the structures in the vicinity as indicated by surface outcrops, where these outcrops can be observed. I think the drilling of this particular well to 4270 feet was contributory evidence that the surface geology itself would indicate that it is highly improbable that the land would be of value for oil. From the geology alone it is highly improbable that oil in commercial quantities would be found in that section 2, and the drilling of the dry hole is merely contributory evidence. (Tr. 678)

Re-Cross Examination

By Mr. Blue:

I have been a witness for the Government or State four or five times and have never testified for a defendant as an expert. There is some difference between a Petroleum Geologist and a Petroleum Engineer, but the line is not very sharp, because the basic training is about the same. I do not feel that I am smarter than the average Petroleum Geologist, necessarily. There are some very fine geologists who come to California and do a splendid job of field exploration, identify the formations and the structure, but when they get through they don't have but a very hazy idea as to what they mean as far as oil development is concerned. I would have a hazy idea of geology if I had to go out and map it myself, but not [108] a very hazy idea after the field work has been done and presented in a workmanlike manner. I have never seen the field work done on Section 2 of the Devil's Den area, but I have seen Arnold structural maps of it. I do not place more credence in surface geology than in the drilling of an oil well, if the well is drilled right on

(Testimony of Harold V. Dodd)

the particular property that one is talking about. I examined the history and the core record of this Lube well. It is in the Taft office, in the Division of Oil and Gas, but before I came down here I did not examine it in detail. I examined the depth—no, I did not examine the core record itself at all. (Tr. 683) I know they ran casing into the well and made certain tests and were unable to bring the well in as an oil well. I believe it had some showings in it. I would not be surprised if there were actually three showings of an oil sand in that particular well because I think there were several quite extensive perforated intervals tested in the casing after it was cased and they were making their tests. (Tr. 683) I have never discovered any oil wells in my life. I have never made any reports, geological reports or petroleum engineer's reports to anyone. It is not permitted under Civil Service rules or under the departmental rules, and we are not permitted to take any outside fees or work of any kind. My work as a petroleum engineer for the past 22 years has been studying any geological reports in the area in which we are working, usually the United States Geological Survey reports because they are the most easily available, but we also have recourse to unpublished reports if the companies will let us look at them, and the records of the drilling. If the well penetrates some formation that looks as though it should be plugged in the process of abandonment, we have to keep tabs on what they penetrate, and [109] then we write our report and notices. I have never given, as a petroleum engineer, any written geological report or opinion. All a geologist does is to give his best guess. I guessed right about this Texas Company stuff in Section 24-28 in the Round Mountain Field. The shallow wells in the Devil's Den area have

(Testimony of Harold V. Dodd)

been producing ever since before the Division of Oil and Gas was established, and that Division was established in August, 1915. It is a general fact on producing wells that the longer a well produces, the less it produces.

Recross-Examination

By Mr. Cannon:

I said I guess right on the Round Mountain Field. I testified under oath at one time that it had no value as oil land, except for speculative purposes. I do not remember testifying before the Grand Jury in 1943 that no company would pay any more than \$2 an acre for that land, but I know that within two months after the testimony I gave that the Texas Company paid \$324.50 an acre for it. It was paid because someone in the Texas Company apparently made a mistake, and before a discovery was made in that vicinity. But they did discover oil in that vicinity after I gave my testimony, but not on that particular land. They discovered oil between the outside limits of the Round Mountain Field as I defined them in my testimony and the then known Round Mountain Field, but that does not mean anything. They brought in more than two producing wells; I think Bandini has three or four wells, and the Texas Company paid \$324 for this particular land after the oil was discovered within about a half a mile of the land, and they paid it for the territory that I condemned and that I still condemn. (Tr. 689) I have not made very many guess as to oil possibilities in any fields, because there [110] is no occasion for it. All of my geological work is not a guess. I cannot understand about the Round Mountain deal with the Texas Company, because the Texas Company has a very fine geologist there. He is a geologist, and I am a petroleum engineer,

(Testimony of Harold V. Dodd)

and he is an exploration geologist and ought to have known better. I do not think he is a petroleum engineer. I do not know whether or not the Texas Company's petroleum engineer is as capable as I am. I helped train him. He probably is as capable as I am. I did some reconnaissance work on Section 2 that we are talking about on June 29, 1944. I studied Arnold's Bulletin 398 in connection with the Devil's Den area. I have it in my office in Bakersfield. It is published by the United States Geological Survey, around 1908. That is the only geological report that I have studied on this area, except Bulletin No. 118 of the Bureau of Mines of California, which has a little article on it. I glanced through it, but I did not read it all. I took into consideration the matter set out in Bulletin No. 118, but my chief reliance was when I stood on that property and looked at both the south, north-west and southeast of it. I relied very slightly on Bulletin No. 118. (Tr. 700)

Re-Direct Examination

By Mr. Manster:

Many wells have been drilled in the San Joaquin Valley that have showings and which wells have later been abandoned as dry holes.

Recross-Examination

By Mr. Blue:

I have referred, in reaching my conclusions, to Bulletin 398 entitled, "The Geology of the Coalinga District, Arnold and Anderson". (Tr. 705) I refer just to [111] map and not to the Bulletin itself. Before coming to my conclusion that this particular property was improbable from the standpoint of producing oil. I only made an

(Testimony of Harold V. Dodd)

investigation from publications such as this. It takes a lot of time to chase down a fault, and it takes an experienced field geologist to do that. I do not claim to be such an experienced field geologist. (Tr. 715) I was on the property and could see the anticline in the Pyramid Hills to the north of this particular property. Quite frequently in the valley floor you have no outcroppings to inspect, to determine whether or not anticlines exist. I was on this particular property about fifteen minutes or so. It is 40 acres in extent. I did not make a survey or attempt to delineate boundaries. In addition to being on the property for about fifteen minutes, and in addition to looking at the contour map in Book 118 of the Division of Mines, page 498, I looked at Arnold's structure map, and by reason of those examinations I came to the conclusion that it was highly improbable that there was any oil there.

Re-Direct Examination

By Mr. Manster:

Even if this Lube well had been drilled deeper than 4270 feet, it is my opinion that it would be highly improbable that oil would be produced. I agree with Mr. Vancouvering, at page 500 of his article (Tr. 720) wherein he says that the productivity of the wells is so small as to be of minor importance, and which statement refers to wells drilled one-half to three-quarters of a mile from Section 2.

Recross-Examination

By Mr. Cannon:

In the same area that Vancouvering was talking [112] about, there is evidence that about 50 other wells were drilled.

(Testimony of Harold V. Dodd)

Q. Why, if you know, in your long experience in the oil business, why would they keep on drilling those wells if there was no probability of oil?

A. The whole area is sucker bait.

Q. Sucker bait?

A. Yes. Every inexperienced oil man who wants to make a million dollars and sees a little oil coming in out of a hundred seventy-five to five hundred feet depth, thinks he is going to make his fortune, and he goes in, and spends all the money he has got, and then passes it on to some other sucker. That has been going on for the last 20 years. (Tr. 722)

(Witness continuing)

That has been partly to my knowledge, and has been going on ever since I have been connected with the Division of Oil and Gas, and as an official of that Division I have done nothing to stop it. It is part of my duties to supervise the sealing up of these wells, and the granting of permits to drill. (Tr. 723)

Recross-Examination

By Mr. Blue:

By referring to "sucker bait" I had reference to the old Devil's Den Field, in which there were 50 or 60 wells drilled. It costs \$1500 to \$2000, I presume, to drill a 300 foot well. I do not know what the original production of those wells was over 30 years ago. There probably is not anybody that knows much about the early production of these wells. I know that Standard Oil Company and Richfield owned or leased some land in that area and drilled some wells north of these shallow wells.

(Witness excused.) [113]

PAUL JULIAN HOWARD,

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is Paul Julian Howard and I live in Bakersfield, and I am a petroleum engineer and listed as Chief Appraisal Engineer and Assistant County Assessor of Kern County. I have held that position for 8 years. I graduated from the University of California College of Mining, and majored in Petroleum Engineering, getting my degree in 1924. Since graduating in 1924, I worked for the first 4 years in refinery engineering and chemistry work, and have written a number of articles dealing with the geology of various oil fields in the San Joaquin Valley in northern California and have done work with geology in connection with valuation of oil fields. My chief duties as Chief Appraisal Engineer and Assistant Assessor of Kern County have to do with the valuation of the mineral lands in Kern County, and in connection with giving a valuation of metallic and non-metallic mineral deposits; and I supervise certain work of refineries and gasoline, and also help with the administration of the office.

Q. Now in pursuance of your official duties, did you make a valuation of the oil and mineral rights of that tract known as the northeast one-quarter of the northwest one-quarter, Section 2, township 25, south range 18-E in Kern County, California?

Mr. Cannon: I will object to that as being immaterial, and no foundation having been laid.

Mr. Manster: I am limiting it to 1939 at the time.

Mr. Cannon: I will object, then, on the further ground— [114]

Mr. Manster: I beg your pardon. It is 1938.

(Testimony of Paul Julian Howard)

Mr. Cannon: I will object, then, on the further ground that there is no issue in the indictment towards which this testimony would have the slightest probative value. We are not charged with selling land for something more than it was worth, nor making any false representations to any person as to its value. It is not part of the scheme alleged. (Tr. 728-729)

Mr. Manster: We maintain it is material on the allegations of the indictment which states that these defendants leased and assigned unproven and undeveloped properties.

Mr. Cannon: It does not go to the value. It goes to the proven or unproven.

Mr. Manster: We maintain, Judge, that the valuation of oil and mineral rights placed by the responsible State official who is charged with that function, is extremely relevant and material on the issue of whether this particular tract was proven and developed or not.

Mr. Blue: May I say something? Pardon me, Mr. Cannon. There is no witness that has appeared to justify any assumption that there was any representation made that this land was proven and/or developed.

Mr. Cannon: That isn't the point that I am making now.

The Court: That isn't the point." (Tr. 729) [114a]

* * * * *

Mr. Cannon: The point I am making now, Mr. Blue, is that there is no allegation here with respect to any part of the scheme having anything to do with the value of the land.

The Court: Well, only in connection with whether it was proven or unproven.

(Testimony of Paul Julian Howard)

Mr. Cannon: I say the assessed value.

The Court: If it were proven, I suppose it would have a higher assessed value.

Mr. Cannon: Probably.

The Court: You can limit it to what he based his valuation on.

Mr. Cannon: Of course, I will submit to your Honor's ruling, but reluctantly, and take an exception, and I would like the objection to stand as to this entire line of questioning covering this tract. (Tr. 729-730)

(Witness continuing)

I did not place any valuation on the mineral or oil rights of that particular tract. As of 1938, I have formed an opinion as to the nature and character of that tract of land with regard to its possibility for the production of oil in commercial quantities, and in my opinion it is unfavorable. In 1939 I did not make an evaluation of the oil and mineral rights of that tract in connection with [115] my official duties; nor did I for the 1938.

Cross-Examination

By Mr. Blue:

I had no value on Ten Sections Field for oil until the discovery was made (Tr. 733); prior to the discovery of oil there, there was no oil value demonstrated. The assessed value of Ten Sections Field today is somewhere around \$17,000,000. Prior to the discovery of the Paloma Field in reference to oil, there was no assessment made against the mineral rights there at all. Before the Ten Sections Field was brought in, I had no valuation there at all until after discovery, but I put valuation on other properties than where the actual discovery well was. I extended my limits out around there based on the

(Testimony of Paul Julian Howard)

geology as it was uncovered with the drilling operations, and included in my assessments what I considered were the limits of the field, and that is now assessed on the books at a value of \$17,000,000. The Ten Sections Field was discovered about 1938, and prior to the discovery of that field, there was no assessment at all placed on it for oil purposes. Probably half a dozen oil fields have been brought in since I have been on my job in Bakersfield; that is, in Kern County. Among them were the Ten Sections Field, the Greeley Field, the Canal Field, Cole's Levee Field. The approximate assessed valuation of the Cole's Levee Field is \$20,000,000 or \$21,000,000. It was brought in about 1938, and prior to discovery I did not place any valuation on it at all, for oil. Prior to the discovery of the Cole's Levee Field it was bare grazing land or alkali land. In 1938 there was no evidence to indicate that there would be a field at that particular place. Evidence was gained through geophysical exploration. There have been other structural highs shown [116] by the seismograph that have been drilled and have produced no oil. (Tr. 740)

Cross-Examination

By Mr. Cannon:

I went to work for the State in 1928. The seismographing of the Cole's Levee Field was done in 1932, and the results of that seismographing were known but I had no record of the picture, and even if I did have, the seismograph does not necessarily prove that there is oil there. It has not been our policy to place a valuation on any of these properties until there is something demonstrated to indicate some value, and until oil actually flows out of the ground.

(Witness excused.)

CHARLES H. SHOMATE,

a witness called by and on behalf of the Government,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is Charles H. Shomate. I reside in Bakersfield, and I am the County Recorder, and have been so since January 8, 1923.

Q. By Mr. Manster: Mr. Shomate, did you make a search of the records during the period from December 1, 1938, to December 1, 1939, with reference to that tract known as the northeast one quarter of the northwest one quarter, Section 2, Township 25 South, Range 18 East, and from your records can you tell us who was the record owner of that property in that period?

Mr. Blue: Just a minute. I object, first, on the fact that when testifying as to records the records are the best evidence. [117]

Mr. Manster: We will produce them.

Mr. Blue: Second, that it is immaterial and not within the issues of the indictment. There is no allegation in the indictment that these defendants did not own anything that they transferred; therefore it is not within the realm of the indictment. (Tr. 743-744)

* * * * *

Mr. Cannon: * * * The other point is that the matter of record of ownership, as we all know, is not determinative of the actual owner. Until and unless someone calls in question the ownership of the property as between parties to an unrecorded document, the title actually stands in the person who owns it. In other words, the recordation statutes are nothing more than to

(Testimony of Charles H. Shomate)

give the world outside notice of ownership. As between the parties the title passes when the deed is delivered. (Tr. 745) [118]

Mr. Manster: With respect to this latter contention, our answer is that the testimony of this witness and the records will show that the defendant Gordon lost this property pursuant to a sale on execution first; subsequently, the materiality of this testimony is that the Union—that the Plymouth Company acquired 235,000 shares of stock for a tract of land or an exchange of a tract of land which the defendant Gordon purported to own but to which he had no title, having lost that title some two years previously. I think it is very material on the question of the assets of the Union Company, which surrendered 235,000 shares of stock for nothing at all, and the value of stock, of course, is intrinsically based upon the value of the assets of the company. (Tr. 745, 746)

Mr. Blue: If the Court please, and I say this in reference to the statement of the District Attorney and in furtherance of the objection, it is immaterial for this reason, that even if the record shows that there was on the records of the County Recorder a lien or a cloud on the title in the name of somebody else so that ostensibly on the records of the Recorder the property did stand in the name of somebody else, that is no evidence that the defendant Gordon and the other lessors in that certain document that is in evidence did not at that time own the property.

The Court: Well, it is some evidence that they did not.

Mr. Manster: We will show that this—

The Court: If they did they can show that they did. Go ahead. [118a]

(Testimony of Charles H. Shomate)

Mr. Cannon: Exception to the entire line of testimony. (Tr. 746)

(Witness continuing)

Between December 1, 1938, and December 1, 1939, M. E. Blynn was the owner of that property, and became the record owner of it on May 9, 1938.

Q. When did this individual, M. E. Blynn, become the record owner of this property?

Mr. Blue: I object to it on the ground that it is not the best evidence. The books are the best evidence.

The Court: He may answer.

Mr. Blue: Exception.

Q. By Mr. Manster: When did she become the record owner of that property?

A. On May 9, 1938.

Q. Can you tell us whether or not Mr. Fred V. Gordon owned any interest in this tract between the period December 1, 1938, and December 1, 1939?

Mr. Blue: I object on the ground it calls for the conclusion of the witness.

The Court: Well, according to his records.

Q. By Mr. Manster: According to your records?

A. No.

Q. Did he own any interest in the property, according to your records? A. No, no interest.

Mr. Manster: All right. Will you excuse me a minute, please, Judge?

(A document was handed by Mr. Manster to Mr. Blue.)

Mr. Manster: Will you stipulate to it?

Mr. Blue: I will stipulate it is a photostatic copy. I object to its materiality. [119]

(Testimony of Charles H. Shomate)

Q. By Mr. Manster: Did you produce a photostatic copy from your records with reference to the acquisition of ownership of this property by M. E. Blynn?

A. I did.

Q. Is this the photocopy to which you have reference?

A. (After examining) Yes, sir.

Mr. Manster: I offer it in evidence.

Mr. Blue: Objected to on the ground that no proper foundation has been laid, not as to the fact it is a photostatic copy, but the fact it is immaterial to the issues.

The Court: It may be received.

Mr. Blue: Exception.

The Clerk: 34.

(The document referred to was marked Plaintiff's Exhibit 34, and received in evidence.) (Tr. 747-748)

[PLAINTIFF'S EXHIBIT NO. 34]

This Indenture, made this Fourth day of May one thousand nine hundred and thirty-eight between Ed. Champness, Sheriff of the County of Kern, State of California, the party of the first part, and M. E. Blynn, a single woman, the party of the second part, witnesseth:

Whereas, by virtue of a writ of execution issued out of and under the seal of the Superior Court of the State of California in and for the County of Los Angeles, dated the 13th day of January, 1937, upon a judgment recovered in said court on the 13 day of November, 1935, in favor of Traders Oil Corporation, and against F. V. Gordon, to the said sheriff of the County of Kern directed and delivered, commanding him that out of the

(Plaintiff's Exhibit No. 34)

personal property of said judgment debtor in his County he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor could not be found, that then he should cause the amount of said judgment to be made out of the lands, tenements, and real property belonging to the said judgment debtor on the day said judgment was recovered, or at any time afterward; and

Whereas, because sufficient personal property of the said judgment debtor could not be found whereof, he, the said sheriff, could cause to be made the moneys specified in said writ, he, the said sheriff, did, in obedience to said command, levy on, take and seize all the estate, right, title, and interest which the said judgment debtor so had of, in, and to the lands, tenements, real estate, and premises hereinafter particularly described, with the appurtenances, and did, on the 23 day of April, 1937, sell the said premises at public auction at the front door of the Kern County Jail in the City of Bakersfield, County of Kern, State of California between the hours of nine in the morning and five in the afternoon of that day, namely: at Eleven o'clock A. M., after having first given notice of the time and place of such sale by advertising the same according to law, at which sale the said premises were struck off and sold to the said *part* Traders Oil Corporation of the second part for the sum of Three thousand seven hundred fifty-seven and 09/100 Dollars, in lawful money of the United States, the said *part* Traders Oil Corporation of the second part being the highest bidder and said amount being the highest sum bid and the whole price paid for the same; and

(Plaintiff's Exhibit No. 34)

Whereas, the said sheriff, after receiving from said purchaser the said sum of money so bid as aforesaid, gave to them, the said *part* Traders Oil Corporation of the second part, such certificate of said sale as is by law directed to be given, and filed and recorded in the office of the County Recorder of the County of Kern, a duplicate of such certificate; and

Whereas, twelve months after such sale having expired without any redemption of the said premises, or any part thereof, having been made; Traders Oil Corporation, having assigned such Certificate of Sale, which transfer is recorder at the office of the Recorder of Kern County in Book 788 at page 306 of Official Records of said County.

Now This Indenture Witnesseth: That I, Ed. Champness, sheriff aforesaid and party hereto of the first part, by virtue of the said writ and in pursuance of the statute in such case made and provided, for and in consideration of the said sum of money above mentioned so paid as aforesaid by the said party of the second part, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said party of the second part and to her heirs and assigns. all the estate, right, title, interest, and claim which the said judgment debtor F. V. Gordon, had on the said 15th day of January, 1937, or at any time afterward, or now *have* of, in, and to the following described premises, viz.: All those certain lots, pieces or parcels of land, situate, lying and being in the County of Kern, State of California, and bounded and particularly described as follows, to-wit:

NE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, and N $\frac{1}{2}$ of the S $\frac{1}{2}$ of the NW $\frac{1}{4}$, all in Section 2, Township 29 South, Range 27 East, M. D. B. & M., all of Section

(Plaintiff's Exhibit No. 34)

2, Township 25 South, Range 18 East,—Except SW ¼ of the SW ¼ thereof, All located in Kern County, California.

Together with all and singular the tenements, hereditaments, and appurtenances, thereunto belonging or in anywise appertaining.

To Have and to Hold the said above mentioned and described premises, with the appurtenances, unto the said party of the second part,—heirs and assigns, forever.

In Witness Whereof, the said party of the first part, as sheriff aforesaid, has hereunto set his hand the day and year first above written.

Ed. Champness
ED. CHAMPNESS

Sheriff of the County of
Kern, State of California.

Signed and Delivered in the)
Presence of)
H. H. Knott)
H. H. KNOTT)

State of California)
) ss.
County of Kern)

On this Sixth day of May, in the year one thousand nine hundred and thirty-eight, before me, Florence Moore, a Notary Public in and for the County of Kern, State of California, personally appeared the within-named Ed. Champness. Sheriff of the County of Kern, State of California, known to me to be the person described in and whose name is subscribed to the within instrument, and

(Plaintiff's Exhibit No. 34)

acknowledged to me that he, as such sheriff of said County of Kern, executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the County of Kern, State of California, the day and year in this certificate first above written.

(Seal)

Florence Moore

My Commission Expires July 15, 1939.

Recorded at Request of Ed. Champness May-9-1938 at 30 min. past 3 P. M. in Book 794 of Official Records, Page 194 Kern County Records. Chas. H. Shomate, Recorder. By Frances Ahmann, Deputy Recorder. Checked By: M. Funk H 10263 Compared By: H. Mills.

State of California)

) ss.

County of Kern)

I, Chas. H. Shomate, County Recorder of said County, do hereby certify that the annexed is a whole, true and correct copy of an original, as will appear by reference to Book 794 of Official Records, Page 194, now in my office, and that said copy has been compared with original and is a correct transcript therefrom.

Witness my hand and official seal this 27th day of June, A. D. 1944.

(Seal)

Chas. H. Shomate,

Recorder in and for the County of Kern, California,

By Margaret Watts,

Deputy.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 34 in Evidence. Date Jul. 13, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Testimony of Charles H. Shomate)

(Witness continuing)

I made a search of my records and could not find thereon any lease in December, 1938, between Fred V. Gordon and wife and others to William S. Millener (Tr. 749), nor could I find any assignment or transfer of a lease in January of 1939 from Millener to the Union Associated Mines Company.

Cross-Examination

By Mr. Blue:

I made a search to determine whether or not that property since 1938 has or is now in the name of Fred V. Gordon and others, and I find a quitclaim deed recorded from M. E. Blynn to Fred V. Gordon on this property. There was a conveyance of the landowner's royalty to the Farmers & Merchants National Bank of Los Angeles. The quitclaim deed was filed in October, 1941, and runs from Mary Blynn to Fred [120] Gordon, it being dated October 30, 1941.

(The document was offered and received in evidence as Plaintiff's Exhibit 35.)

(Witness continuing)

I do not know anything about any of the facts except what appears on the records in the County Recorder's office.

(Witness excused.)

(At this point, Mr. Manster, one of the prosecution attorneys, read the following letters which are part of Government's Exhibit No. 16 in evidence:)

Mr. Manster: September 24, 1938, from A. P. (Tr. 751) Adkisson to J. A. Barclay, New House Building, Salt Lake City, Utah:

“Dear Mr. Barclay:

“Am enclosing clipping from Los Angeles Times of September 24, 1938, which is the opening gun of publicity to be used in connection with Union Associated Mines Company operations.

“Similar articles will appear Sunday, September 25, in the Los Angeles Examiner and Long Beach papers. On Monday an article will be published in the Wall Street Journal.

“Then open order I have you to purchase up to 5000 shares at one cent is perhaps to small an amount to bid for, therefore I will authorize you to change this to an open order, good until cancelled, for fifty thousand shares at one cent per share plus your commission.

“I will call you on the phone this evening to explain my departure.

“Yours very truly,

“A. P. Adkisson (s)

“A. P. Adkisson.”

September 26, 1938, from J. A. Barclay to A. P. Adkisson:

“Dear Mr. Adkisson:

“Thanks for your favor of the 24th instant enclosing clipping which I was pleased to receive. (Tr. 752)

“Now, as regards the market—you are pushing it too quickly to get any stock at the low prices. We

have contacted all the possible sources here among the brokers but it has been so long dead they have not got any and have to look it up.

“Unless you want me to push it up to 2¢ bid, let me know, but my idea is to just let the price drag for a few days and if you could give me a list of the Utah stockholders I could work on them. That man, Ray, who was in Los Angeles, of course, started telling about the deal but I think I got that shut-off.

“I have two directors for you—one of them a contractor and the other a son of one of the brokers and will tell you about them when you get here.

“Now, as I understand your orders, they are to buy up to 50,000 shares @ 2¢.

“When are you going to return to Salt Lake? Am just asking this in order that I might start some publicity here and then again a list of stockholders outside of Utah ought to get a letter for some of those in the ‘know’ will be endeavoring to get them to sell their stock at the low prices when we want them to keep it.

“The market had the jitters today on account of Hitler’s speech but the opinion seems to be that (Tr. 753) he held out olive branch and that there may be no war. If this is correct, we should have a better market tomorrow.

“Kindest regards and good luck!”

A telegram, J. A. Barclay and Co. to Arthur J. Adkisson:

“No bids except ours—”

Mr. Evans: What is the date?

Mr. Manster: Pardon me. September 26, 1938:

“No bids except ours and no offers Working on two or three lots Wish had stock list

“J. A. Barclay and Co.”

From Barclay to Adkisson, dated September 27, 1938:

“Dear Mr. Adkisson:

“Thanks for your wire of today’s date as follows—

“‘John Clayton offered me by wire ten thousand shares Union Associated at one and one half please accept stock at that price for my account if he makes immediate delivery am notifying him to delivery to you’

“And confirm ours of this afternoon—

“‘Clayton presented one certificate 10,000 in name Weeks unwitnessed assessment payment not marked stop refused until made regular thousand certificates and necessary requirements stop your (Tr. 754) authority for us to accept necessary stop you stated Weeks would not sell’

“After sending above wire. Mr. Clayton came in and delivered the stock, eight one-thousands and one two thousand share certificates.

“In conversation, I asked why Weeks was selling and he said Weeks was not selling because he was out of town but this stock was laying around and he had an opportunity to pick it up. I told him that

if he would stop people from selling we would get this stock up to 5 to $7\frac{1}{2}$ and there was no sense in having people buy the stock @ $1\frac{1}{2}$ or 2ϕ .

“Mr. Clayton also said that *that* the stock book had been sent down for Mr. Bray to sign and the thought comes to me that you might send all the certificates to us and we will delay delivering them as long as we can, giving us time to work the market up.

“After Clayton left the office the first time, Mr. Morgan called me up and said that he was secretary of the company and that it was alright—that the certificates will be up in a few days but that was not sufficient for me to make delivery in the shape they were offered. All the certificates we have now have Assessment No. 8 stamped on them with the exception of one for 1,000 shares which they say they (Tr. 755) had checked and it was alright but to keep good friends thought it best to take a chance on that.

“I need a copy of the contract with the Plymouth Oil Company and should get this directorship straightened out as soon as possible in your best interests.

“Morgan is secretary, he tells me, and he is an attorney and that all means that he could not certify papers to the SEC registration. Am not trying to work you unnecessarily hard but these loose ends should be straightened out more particularly as under the old control there were so many loose ends and people knew it.

“Advise me of your plans and needs and will do our very best at this end for you know the writer just prides himself that ‘service’ is his middle name.

“With kindest regards!

“Cordially yours,

“J. A. BARCLAY & COMPANY.” (Tr. 756)

Mr. Cannon: May I request that if counsel doesn't read all the letters—I don't care about reading them all, but will you so indicate.

Mr. Manster: I am reading all of them.

Mr. Cannon: Just so we will know.

Mr. Manster: I am reading the complete letters, Mr. Cannon.

September 28, 1938, from J. A. Barclay to Mr. A. C. Adkisson.

“Mr. A. P. Adkisson,

“Paul J. Marache and Co.

“6-50 South Spring St.

“Los Angeles, Calif.

“Dear Mr. Adkisson:

“Thanks for your favor of the 27th instant and as we understand it now, your orders are to buy 25,000 shares UNION ASSOCIATED MINES at $1\frac{1}{2}\phi$ but if any is offered at 2ϕ to take it.

“Will watch the Salt Lake papers for your publicity and today obtained a copy of the letter sent out by the Company boosting Mr. Mrogan. After read it, am reminded of the story of how the bartender in a saloon had given a man a drink who wanted to buy it on credit. The bartender called up to the proprietor and asked ‘Is Jones good for a drink?’ and Murphy

said, 'Has he had it?' The bartender said 'yes.' Then Murphy says, 'He's good.' (Tr. 757) It is the same way about sending *how* this circular. However, the main facts worth while about the company are quite impressive and when I get ahold of the list of stockholders outside of Utah will compile the facts as we see them and it may be more effective.

"You say that Messrs. Truman and Clayton will resign but as I have already stated to you, you cannot have a Secretary-Treasurer an attorney and certify any documents to the Securities & Exchange Commission.

"We note what you say about their deal on the 10,000 shares and your suspicions about the deal agree with mine. They were so anxious to get the money that afternoon that it gave me the impression that it was more personal than otherwise.

"Will endeavor to see Weeks and as soon as I get his address will call him up and tell him I would like to have a talk with him.

"Will keep you posted on any happenings and hope that you appreciate that my suggestions are solely in the interest of advancing the company and giving it a standing which we must all admit it did not have before.

"Must ask you to excuse my emphatic Scotch but I do like to see things go right and be done right when it comes more especially to obtaining confidence in a company like this which it did not have before.

"Hoping the market cheered you up today and with (Tr. 758) kindest regards and all good luck!

"Very truly yours,

"J. A. BARCLAY & COMPANY."

From A. P. Adkisson to J. A. Barclay, dated September 27, 1938.

“In reply to your letter of September 26th, relative to UNION ASSOCIATED stock:

“I quite agree with you that we are pushing the market too fast and so will instruct you to do as you suggested, that is to bid 1½ cents but if any is offered at 2 cents to take it. However, the amount was to be 25,000 shares.

“There was some publicity sent out from Los Angeles today that should appear in the Salt Lake papers this evening or tomorrow. We will furnish more presently.

“I talked to Morgan about putting on some new directors to replace Truman and Clayton and he agreed it was the thing to do. Will be happy to talk to you about the gentlemen you suggested. If they meet your standards I am sure we will approve, so no trouble there.

“This will be your authority to accept the Clayton stock as ordered. We talked to Morgan on the phone as soon as your telegram arrived and asked him what the hell Weeks and Clayton were cooking up. He explained that one of their friends, who had 15,000 shares to sell had it all in one certificate and as they had no one (Tr. 759) to sign the new certificates they had accomodated him by lending him a certificate belonging to Weeks, so he could deliver the 10,000 shares. Seemed satisfactory to us so it's okay to accept, but we let them know we were watching them. I am sure that Weeks won't sell, however, if you have an opportunity I would like to have you talk to him.

“Morgan is supposed to have a letter out to the stockholders today or tomorrow. Will you please ask him to send you as many as you feel you will need.

“I do not know just when I will get back to Salt Lake but feel we are in good hands with you and if anything important comes up I can be there in a few hours and also I want you to feel free to phone or wire me any time ‘collect’ or send me an account of the charges.

“Thanks for your advice in these matters and feel free to give us your opinion at any time. With Best Wishes,

“Sincerely yours,

“Arthur P. Adkisson.”

Next, a letter from J. A. Barclay to A. P. Adkisson, dated September 29, 1938.

“Dear Mr. Adkisson:

“Thanks for your favor of the 28th instant and note that you are sending copy of the contract with the Plymouth Oil Company.

“Nothing came of our offer of the stock today but (Tr. 760) in face of the facts that there were several inquiries did not desire to say that there were no offerings but rather give them a quotable market. If they had accepted the offer, then we would have been in a position of getting behind the market so that if any decent block came on higher than your limit at which to buy we would be in a position to take it. In other words, it would be a support behind the market which would engender confidence.

“Thank you for your check in the sum of \$162.50 in settlement of the purchase of 10,000 shares UNION ASSOCIATED MINES COMPANY and we are forwarding you the certificates under registered cover.

“You will notice that as we stated in our previous letter, one of the certificates does not have Assessment No. 8 stamped on it but Clayton assured us that the assessment had been paid.

“We will keep you posted and endeavor to handle the market so that investors will gradually acquire not only interest but confidence.

“With kind regards!

“Very truly yours,

“J. A. BARCLAY & COMPANY.”

From J. A. Barclay to Mr. A. P. Adkisson, dated September 30, 1938.

“Dear Mr. Adkisson: (Tr. 761)

“Was pleased to talk with you over the telephone today although there was really nothing new as regards the market.

“There are no offerings here and there have been no buyers outside of ourselves over 1¢.

“In talking with Mr. Marache, promised to send him copy of a letter which we believe would be of help to send out not only to the stockholders but some of our own people.

“We do not want to talk about the past but paint the picture of the future and would like a copy of the contract and also would like to say, if you have no

objections that the control of the company is now owned by California people.

“Another thing, think it is advisable to say that it is the intention of the management to make application to the Salt Lake Stock Exchange to restore the listing.

“Am an optimistic within the bounds permitted by the Securities & Exchange Commission.

“Understand from Mr. Morgan that Mr. Weeks will be here Monday and intend if possible to get in touch with him and have a chat.

“Will call you up on anything worthwhile, and with best wishes, I am

“Very truly yours,

“J. A. BARCLAY.” (Tr. 762)

From J. A. Barclay to A. P. Adkisson, dated October 1, 1938.

“Dear Mr. Adkisson:

“There have been quite a few inquiries around the market for UNION ASSOCIATED and we closed it 3¢ bid at 3½¢ today. Most of the inquiries came from California.

“BULLION MINING, which is another property interested in California oil lands, closed 7¢ bid.

“Will support the market at this end and it looks as if the price is now coming up to a figure justified to a certain extent by the interest in the Company.

“With kind regards!

“Very truly yours,

“J. A. BARCLAY.”

From J. A. Barclay to A. P. Adkisson, dated October 3, 1938:

“Dear Mr. Adkisson:

“Thanks for your favor of the 1st instant and we appreciate your confidence.

“There was no trading today on UNION ASSOCIATED and we quoted the market 3 at $3\frac{1}{2}\phi$.

“This morning, Mr. Orton called to see me and stated that the stockholders’ list was in pretty bad shape and it would take him time to get it straightened out so as to furnish me with a correct list.

“Mr. Weeks was in Ogdon this morning, was expected (Tr. 763) in our city before night but as yet Mr. Morgan has not informed me of his arrival. Just as soon as we get all the different things straightened out, will endeavor to get in touch with the stockholders and several on our own mailing list and will avoid using the word ‘control’ but can state that ‘oil interests in California are well represented.’

“By the way, you promised to let us have a map of the properties. If you have a spare one, would like you to send it on and expect you to keep us posted as to when drilling is started and various other developments from time to time.

“Appreciating your cooperation in the one common object . . . to get the investing public to realize that UNION ASSOCIATED stock has a future.

“Very truly yours,

“J. A. BARCLAY & COMPANY.”

From A. P. Adkisson to J. A. Barclay, dated October 1, 1938. This is a little out of chronological order:

“Dear Mr. Barclay:

“Glad you had opportunity to talk to Mr. Marache about the market there in Salt Lake. He said you were handling it perfectly which pleased me for I have been telling him that we were in proper and experienced hands at that end.

“We have just started to talk to our friends here (Tr. 764) and were under the impression that there should have been orders for approximately 30,000 shares at three cents.

“Am writing Morgan to furnish you with stockholders list so that you may mail the letter you are getting out concerning the company.

“Also enclosed you will find copy of agreement which I promised you.

“Have discussed the matter of your letter concerning company with the men here. At present they do not think it advisable to mention that control has passed to California people but think telling them we will make application to list stock an excellent idea.

“Thanks again for your very nice letters, they keep us well informed. Also appreciate your frankness of opinion which we consider of great value.

“Cordinally yours,

“Arthur P. Adkisson.

“P.S. Since writing the above have further discussed the question of saying control was now in the hands of California people. We have decided that if you think it advisable that it will be alright with us. In other words use your own judgment. Our only

thought was the word 'control' scares some people. However, we can see the merit of telling them of a new management that we hope will be infinitely more successful than formerly." (Tr. 765)

From A. P. Adkisson to J. A. Barclay, dated October 3, 1938:

"Dear Mr. Barclay:

"This will acknowledge receipt of your letter dated September 29, 1938, containing the following certificates UNION ASSOCIATED MINES CO. stock: Nos. 2326 (1000), 2345 (1000), 3049 (1000), 3021 (1000), 3022 (1000), 3027 (1000), 3023 (1000), 3026 (1000), and 2967 (2000).

"The following telegram addressed to me was received from John Clayton this morning, quote, 'Market here cleaned up. Think prices climbing too fast if price gets too high outside stock will come in and cause severe drop. Feel advisable for me to write outside stock and offer 3 cents (or whatever you think best). This would give better control of market—signed John Clayton.'

"Am enclosing copy of my letter in answer to Claytons' telegram. I hope it meets with your approval.

"Wrote Morgan Saturday asking him to see that you were furnished with a copy of the stockholders list as prepared by Mr. Orton, the accountant.

"We are well pleased with your work at that end. If we can assist you in any way please call us.

"Sincerely,

"Arthur P. Adkisson."

From A. P. Adkisson to Mr. John Clayton, dated October 3, 1938. (Tr. 766)

"Dear Mr. Clayton:

"Your telegram relative to the market on Union Associated received, and duly appreciated. However, since Mr. Barclay has been appointed to take care of the market situation, I believe all questions concerning same should be referred to him directly.

"This doesn't mean that you should not deal in the stock yourself. It would seem to me that you, working in conjunction with him, would have better support and a thorough knowledge of what is going on locally.

"While the market is showing good strength as far as price is concerned we do not feel the price is out of line commensurate with the activities of the company.

"The activities around the general area where the 70 acre lease is held are considerable and would indicate that the general trend is toward this lease. A piece of property of this size, proven up, would be of tremendous value to the stock. As for our Torrance lease of course it is generally conceded that we can't miss a well.

"We expect to furnish you, very shortly, with a geological report from one of our leading geologists, on the 70 acre piece, which should leave very little doubt as to the value of this lease to the company.

"Will appreciate anything you can do to help Mr. Barclay and incidentally you should be in a position to do quite a little business for yourself. (Tr. 767)

"With kindest regards to you and Judge Morgan.

"Cordially yours,

"Arthur P. Adkisson."

From J. A. Barclay to A. P. Adkisson, dated November 18, 1938.

“Dear Mr. Adkisson:

“Thanks a lot!

“It is just wonderful the speed in which you are putting that well down and I think everyone here is like you are in Los Angeles—awaiting for the drill to strike the pool of black gold before they do anything in the stock.

“Morgan got out a circular today to the stockholders. It was alright and will keep them from selling even if it does not mean buying orders.

“With best wishes, I am

“Very truly yours,

“J. A. BARCLAY & COMPANY”

From J. A. Barclay to A. P. Adkisson, dated November 22, 1938:

“Dear Mr. Adkisson:

“Thanks for your wire!

“Our market was just dead today in everything as you will note from the enclosed quotation sheet.

“In the case of UNION ASSOCIATED—there was not a buying order nor a selling order in the market. I canvassed every possible channel and no broker had an order of any description.

“Will watch it closely for you, although tomorrow is likely to be just as dead as today but will do my best to help you.

“Kind regards,

“Very truly yours,

“J. A. BARCLAY & COMPANY

From J. A. Barclay to A. P. Adkisson, dated December 2, 1938:

"Dear Mr. Adkisson:

"Many thanks for your wires relative to the well. I have endeavored to use them to good advantage but the discouraging feature has been that offers of stock are coming from your end. Was offered 10,000 shares yesterday @ $2\frac{1}{2}\phi$ and the same amount today. A little buying from your end would change the aspect here, even though the rest of our (Tr. 769) market is practically dead.

"I think you people have done wonders and some day we will all get our innings.

"Very truly yours,

"J. A. BARCLAY & COMPANY."

From J. A. Barclay to A. P. Adkisson, dated December 9, 1938:

"Dear Mr. Adkisson:

"I want to congratulate you upon the messages the Plymouth Oil Company are sending to the Stock Exchange.

"These messages would be most effective in making people become *interest* in UNION ASSOCIATED MINES COMPANY were it not for the fact that when every time a wire is received there also comes selling orders out of your end and you know that just kills the whole picture for if the controlling parties do not show an interest in the upward movement, what do you expect others to do?"

“Very sorry to see this as from your experience in the stock business you can figure the *affct* it has psychologically.

“Very truly yours,

“J. A. BARCLAY.”

From J. A. Barclay to A. P. Adkisson, dated December 29, 1938: (Tr. 770)

“Dear Mr. Adkisson:

“Acknowledging your favor of the 28th instant, and in reply would say that you are no more disappointed in UNION ASSOCIATED than I am. It is difficult for we people here to understand the situation, for instead of the stock going up as it should have, there has been a continuous flow of stock from your end. However, it may be that in time the well will work out to the salvation of the stockholders.

“As regards selling the stock @ $2\frac{1}{2}\phi$ —it is impossible to do so as the last sale here was 10,000 shares yesterday @ $1\frac{1}{2}\phi$. If you wish to, however, I think I can sell 20,000 shares @ 1ϕ , and if you wish to do this, wire me the first thing tomorrow morning.

“Of course, you are probably disappointed in this price but the way things look no one here wants to bid for it.

“Mr. Morgan has been in Los Angeles for about a week now and none of us have heard anything and with continuous selling from Los Angeles confidence has been broken.

“Appreciating your good wishes, and sorry I cannot send you a more inspiring reply.

“Sincerely,

“J. A. BARCLAY.” (Tr. 771)

From J. A. Barclay to A. P. Adkisson, dated December 30, 1938:

“Friend Adkisson:

“Acknowledging your wire of yesterday, which arrived after we had left the office, and today’s wire, as follows:

“‘In new deal Union will see take care of you’

“‘Could not make delivery at your price. Morgan returns tonight. deal all complete Derrick erected for second well. No sales coming from our people here. regards’

“We were especially gratified to get today’s wire as there has been such an absence of information that while, I have faith in the outcome of your operations, the public lost interest, and this, together with the stock which had been selling, cause the decline. Now, that Mr. Morgan will be here, he will probably make all the information available to us, and we can get a more correct viewpoint.

“The company suffered first from its past reputation and then next from the continued offering of stock coming from your end. As far as we could trace, there has been little local stock sold and the offerings mainly came from the wirehouses.

“With a clear situation as to the future we (Tr. 772) can get to work and get the stock higher provided the supply will dry up, and rest assured that I will cooperate to this end. I want to see it listed and the company can gradually gain confidence of investors to a point where demand will exceed the supply and bring about a rising market.

“Well, we are now at the end of 1938 and next week we will begin the new year. It looks to me

that it holds plenty of promise for prosperity and my wish is that it will come to you in large measure.

“Cordially and sincerely,

“J. A. BARCLAY.”

From A. D. Adkisson to J. A. Barclay, dated December 28, 1938:

“Dear Mr. Barclay:

“Thanks very much for your letter of the twenty second with your kind thoughts and wishes. Sorry to have been tardy in answering but you know how those things are this time of the year.

“Have been quite keenly disappointed in the way Union Associated Stock has acted and probably we will have to pay a dividend or bring in another well before the stock will show any signs of life.

“We really have a nice well and with the drainage we have should produce a lot of oil. The well cost approximately forty thousand dollars so the Unions (Tr. 773) interest is really worth while.

“I would like to ask you to do me a personal favor. I’ve ten thousand shares that I would like to get 2 cents for and if you could do this for I would be very much indebted to you.

“You can still reach me thru Marache and Co. I just happen to write this from the office of a friend.

“Thanks again for your best wishes and assuring you that I wish you a very happy and prosperous New Year I am

“Very Sincerely

“A. P. Adkisson (s)

“P. S. Will certainly appreciate it if you can place this stock for me.

“APA.” (Tr. 774)

IDA APPERSON,

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Mrs. Ida Apperson. I turned in some property and bought some stock of Union Associated Mines Company. I live in Los Angeles.

(Witness excused.) [121]

At this point, Plaintiff's Exhibits as follows were offered and received in evidence, each being a printed form letter:

Exhibit No. 3. Letterhead of Union Associated Mines Company, undated, directed "TO THE STOCKHOLDERS OF THE UNION ASSOCIATED MINES COMPANY:"

Exhibit No. 4. Letterhead of Union Associated Mines Company, dated January 6, 1939, addressed "To the Stockholders of Union Associated Mines Company:"

Exhibit No. 5. Letterhead of Union Associated Mines Company, dated August 1, 1939, addressed "To the Stockholders of Union Associated Mines Company:"

There was also offered and received in evidence without objection Plaintiff's Exhibit No. 36, certified copy of the Articles of Incorporation of Plymouth Oil Company.

[PLAINTIFFS' EXHIBIT NO. 36.]

State of California—ss

I, Edwin M. Daugherty, Commissioner of Corporations of the State of California, do hereby certify that the following are true and correct copies of the documents described below, in the matter of Plymouth Oil Company, as the same are now on file and of record in my office:

Permit issued June 7, 1939;

Permit issued September 19, 1938;

Order Approving Escrow Holder issued December 12, 1938;

Certified copy of Articles of Incorporation, attached as Exhibit "A" to application filed August 26, 1938.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 4th day of April, 1941.

EDWIN M. DAUGHERTY

Commissioner of Corporations

By J. A. HAHN

J. A. HAHN

Assistant Commissioner

Before the

Department of Investment

DIVISION OF CORPORATIONS

of the

State of California

In the matter of the application of

PLYMOUTH OIL COMPANY

for a permit authorizing it to sell and issue its securities

(Plaintiff's Exhibit No. 36)

PERMIT:

File No. 68096LA

Receipt No. LA 6256

This Permit Does Not Constitute a Recommendation or
Endorsement of the Securities Permitted to be
Issued, but is Permissive Only

PLYMOUTH OIL COMPANY,

a California corporation, is hereby authorized to sell and
issue its securities as hereinbelow set forth:

1. To assign, set over, and transfer to John McKeon
a 10 per cent operating interest in all oil, gas, and
other hydrocarbons which may be produced and
saved from the real property described in the ap-
plication, for the consideration and in the manner
set forth in said application, upon conditon that ap-
plicant execute and deliver as evidence of owner-
ship thereof, an assignment substantially in the
form submitted May 26, 1939 and marked Exhibit
"C".

This permit is issued upon each of the following con-
ditions:

(a) That the assignment authorized to be executed and
delivered by paragraph 1 hereof shall not be executed and
delivered unless and until the applicant first shall have
selected an escrow holder and said escrow holder shall have
been first approved in writing by the Commissioner of
Corporations; that, when executed and delivered, the roy-
alty assignment evidencing the ownership of the operat-

(Plaintiff's Exhibit No. 36)

ing interest herein authorized to be sold, shall be forthwith deposited with said escrow holder, to be held as an escrow pending the further written order of the said Commissioner; that the receipt of said escrow holder for said royalty assignment shall be filed with said Commissioner; and that the owner or persons entitled to said interest shall not consummate a sale or transfer of said interest, or any part thereof or any interest therein, until the written consent of said Commissioner shall have been obtained so to do.

(b) That unless revoked, suspended or extended by alteration or amendment, upon application filed on or before the date of expiration specified in this condition and upon such terms and conditions as the Commissioner may deem proper, all authority to sell securities under issuance clause 1 of this permit shall terminate and expire on the 29th day of November, 1939. All other issuance clauses and/or conditions of this permit shall remain in full force and effect until revoked, suspended, altered or amended by appropriate order of the Commissioner.

Dated: Los Angeles, California

June 7, 1939

(Seal)

EDWIN M. DAUGHERTY

Commissioner of Corporations

By J. A. HAHN (Signed)

J. A. HAHN

Deputy

(Plaintiff's Exhibit No. 36)

Before the
Department of Investment
DIVISION OF CORPORATIONS
of the
State of California

In the matter of the application of

PLYMOUTH OIL COMPANY

for a permit authorizing it to sell and issue its securities

PERMIT

File No. 68096LA

Receipt No. LA 6256

This Permit Does Not Constitute a Recommendation or
Endorsement of the Securities Permitted to be
Issued, but is Permissive Only

PLYMOUTH OIL COMPANY,

a California corporation, is hereby authorized to sell and
issue its securities as hereinbelow set forth:

1. To sell and issue to the persons named in the application an aggregate of not to exceed, to any or all of them, 1,000 of its shares, at par, for cash, lawful money of the United States, for the uses and purposes recited in the application and so as to net applicant the full amount of the selling price thereof.

This permit is issued upon each of the following conditions:

- (a) That none of the shares authorized by paragraph 1 hereof shall be sold or issued unless and until the applicant first shall have selected an escrow holder and said

(Plaintiff's Exhibit No. 36)

escrow holder shall have been first approved in writing by the Commissioner of Corporations; that, when issued, all certificates evidencing any of said shares shall be forthwith deposited with said escrow holder, to be held as an escrow pending the further written order of the said Commissioner; that the receipt of said escrow holder for said certificates shall be filed with said Commissioner; and that the owner or persons entitled to said shares shall not consummate a sale or transfer of said shares, or any interest therein, until the written consent of said Commissioner shall have been obtained so to do.

(b) That unless revoked, suspended or extended by alteration or amendment, upon application filed on or before the date of expiration specified in this condition and upon such terms and conditions as the Commissioner may deem proper, all authority to sell securities under issuance clause 1 of this permit shall terminate and expire on the 17th day of December, 1938. All other issuance clauses and/or conditions of this permit shall remain in full force and effect until revoked, suspended, altered or amended by appropriate order of the Commissioner.

Dated: Los Angeles, California

September 19, 1938

(Seal)

EDWIN M. DAUGHERTY
Commissioner of Corporations

By J. A. HAHN (Signed)

J. A. HAHN

Deputy

HVW:MGD

(Plaintiff's Exhibit No. 36)

Before the
Department of Investment
DIVISION OF CORPORATIONS
of the
State of California

In the matter of the application of

PLYMOUTH OIL COMPANY

for a permit authorizing it to sell and issue its securities

ORDER APPROVING ESCROW HOLDER

File No. 68096LA

R. A. Dunnigan Attorney at Law, of Los Angeles, California, having been designated by applicant as Escrow Holder under the permit heretofore issued to applicant on the 19th day of September, 1938, and all other permits and amendments and supplements thereto.

It Is Ordered that said R. A. Dunnigan be and he is approved as such Escrow Holder.

Dated: Los Angeles, California

December 12, 1938

(Seal)

EDWIN M. DAUGHERTY

Commissioner of Corporations

By RONALD H. LOENHOLM (Signed)

RONALD H. LOENHOLM

Deputy

HVW:EM

(Plaintiff's Exhibit No. 36)

Frank C. Jordan
Secretary of State

STATE OF CALIFORNIA
DEPARTMENT OF STATE

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

In Witness Whereof, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 19th day of August, 1938.

FRANK C. JORDAN (Signed)

Secretary of State

By CHAS. J. HAGERTY (Signed)

Deputy

(Great Seal of the State
of California)

[Exhibit "A".]

(Stamp)

Endorsed

Filed

In the office of the
Secretary of State of
the State of California

Aug 19 1938

(Plaintiff's Exhibit No. 36)

Frank C. Jordan
Secretary of State

By Chas. J. Hagerty
Deputy

ARTICLES OF INCORPORATION
OF
PLYMOUTH OIL COMPANY

Know All Men by These Presents:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California, And We Hereby Certify:

First: That the name of the corporation shall be
PLYMOUTH OIL COMPANY,

Second: The purpose for which said corporation is formed are:

- (a) To carry on the business of producing, acquiring, buying, selling and otherwise disposing of and turning to account and dealing in petroleum of all grades, natural gas, asphaltum, bitumen and bituminous substances of all kinds, carbon and hydrocarbon products of all kinds, coal, gold, silver, iron, copper and all other minerals and metallic substances, and in general subsoil products and surface deposits of every nature and description.
- (b) To prospect, explore, drill for, discover, survey, extract, produce, mine, mill, separate, convert, smelt, refine, reduce, treat, manufacture, store or otherwise turn to account, sell, deal in, transport

(Plaintiff's Exhibit No. 36)

through pipe lines, in vessels or otherwise on land or water, though not for public service, each and every of the substances specified in subdivision "(a)" hereof, either in its natural form or in any altered, manufactured or refined form.

- (c) To acquire by purchase, lease or otherwise, and to own, sell, lease, mortgage, convey, develop, improve and operate in any state of the United States or in any territory, colony or possession of the United States, or in the District of Columbia, or in any foreign country, any and all lands, leases, options, concessions, grants, land patents, franchises, rights, powers and privileges which the corporation may deem wise and proper in connection with the conduct of the business hereinbefore referred to.
- (d) To buy, sell, own, mortgage, hypothecate, and/or deal in the stocks and bonds of other corporations.
- (e) To purchase, lease or otherwise acquire, use and operate, care for and dispose of, any plant or plants which may be used for or useful in connection with any such business as hereinabove specified, whether now established or hereafter to be established, and any and all property and good will connected therewith, and also any wells, machinery, appliances, tools, supplies, materials, and other real or personal property rights and privileges of any character whatsoever suitable, convenient or necessary for any of the purposes aforesaid, or which can lawfully be used in connection therewith; and also to do any other similar or different business or thing incidental to or which may lawfully and conveniently be done in connection with any of the matters aforesaid.

(Plaintiff's Exhibit No. 36)

(f) To have offices, conduct its business and/or promote its objects within and without the State of California, in other states, the District of Columbia, the territories and colonial dependencies of the United States, and in foreign countries, without restrictions as to place or amount.

(g) To buy, sell, own, mortgage, hypothecate, lease and/or deal in real and/or personal property of any and all kinds and character.

Third: The principal office for the transaction of the business of the corporation shall be located in the County of Los Angeles, State of California.

Fourth: That the amount of the capital stock of said corporation is one million shares of Ten (10¢) cents par value, and the aggregate par value of \$100,000.00.

Fifth: The total number of shares of stock of this corporation actually subscribed is One Thousand (1000) shares. The names of the subscribers to said stock, and the number of shares respectively for which they have subscribed, and the amount to be paid by them for such shares are as follows:

Fred V. Gordon	400	\$40.00
Sidney Fischgrund	400	\$40.00
Guy B. Davis	200	\$20.00

Sixth: The number of the directors of the corporation shall be Three (3), and the names and addresses of the persons who are appointed to act until the first annual

(Plaintiff's Exhibit No. 36)

meeting of shareholders, or until the selection and qualification of their successors, are as follows:

Fred V. Gordon	Los Angeles, California
Sidney Fischgrund	Los Angeles, California
Guy B. Davis	Los Angeles, California

In Witness Whereof, we, the undersigned, being all of the directors herein named have hereunto set our hands this 17th day of August, 1938.

(Signed) FRED V. GORDON
 " SIDNEY FISCHGRUND
 " GUY B. DAVIS

State of California
 County of Los Angeles—ss.

On this 17th day of August, 1938, before me the undersigned, a notary public in and for said county and state, personally appeared Fred V. Gordon, Sidney Fischgrund and Guy B. Davis, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

(Signed) R. A. DUNNIGAN
 Notary Public in and for said
 County and State.

(Notarial Seal)

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 36 in evidence. Date Jul. 14, 1944. E. U. Frankenberger, Deputy Clerk.

[Endorsed]: Filed May 11, 1945. Paul P. O'Brien, Clerk.

Mr. Manster: We have here several checks signed by the Plymouth Oil Company by Fischgrund and Davis.

Mr. Blue: We have no objection to the foundation, but we object to the materiality of it.

Mr. Manster: With reference to the materiality, these checks, 7 checks commencing with October 7, 1938, and extending to December 22, 1938, are made payable to R. R. Bray, which the record shows was the president of the Union Associated Mines Company, and all these checks are issued by the Plymouth Oil Company and signed by Sidney Fischgrund and Guy B. Davis.

We maintain it shows a connection between the Union and the Plymouth Company, and is material on the question of control by the Plymouth Company over the Union Company. It shows payment by the Plymouth Company to an officer of the Union Company.

The Court: Well, they may be received.

Mr. Blue: Exception. (Tr. 785-786) [122]

* * * * *

Mr. Cannon: It can go in the same exhibit. That one is for \$50 to Collins, and that is the only check that Plymouth gave him, so far as you know, isn't it?

Mr. Manster: So far as I know.

(The document referred to was marked as Plaintiff's Exhibit No. 37 and received in evidence.) (Tr. 786)

At this time the following exhibits were offered and received in evidence:

Plaintiff's Exhibit No. 38. Photocopy of contracts between Plymouth Oil Company and Standard Oil Company of California with reference to purchase of oil from Plymouth wells Nos. 1 and 2; photocopies of two letters

signed by Sidney Fischgrund and Guy B. Davis, addressed to Standard Oil Company of California, having to do with the distribution from the proceeds to be received by the Plymouth Oil Company for the payment of oil from those two wells.

Plaintiff's Exhibit No. 39. Photocopies of records from Standard Oil Company showing the aggregate production of oil from Plymouth wells Nos. 1 and 2, by month, in barrels, and the value or price, and the payments made to Plymouth Oil Company and Union Associated Mines Company, and to the landowners for their royalties, up to and through December, 1939.

Plaintiff's Exhibit No. 40. Plymouth Oil Company record showing the daily pumpers' reports on wells Nos. 1 and 2, up to December, 1939; also the gauge, or the tank gauge scale, for computing the barrel production on the basis of the depth of oil in the tank.

Plaintiff's Exhibit No. 41. Duplicate of report [123] filed by Plymouth Oil Company with the Division of Oil and Gas of California, showing the initial production of Plymouth Wells Nos. 1 and 2.

LEWIS J. HAMPTON,

called as a witness by the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Lewis J. Hampton and I live in Los Angeles and I am a stockholder of the Union Associated Mines Company.

At this point 4 checks drawn by the witness, bearing Nos. 1025, 1019, 1031, and 1032, delivered to John

(Testimony of Lewis J. Hampton)

McEvoy and charged to the account of the witness, and each of which checks bears the endorsement of Mr. McEvoy, but of none of the defendants, were offered and received in evidence, as Plaintiff's Exhibit No. 42, and 10 stock certificates of Union Associated Mines Company, bearing the following numbers: No. 3397, 3396, 4066, 4068, 4069, 3808, 3807, 3806, 3805, 3851, each for 1,000 shares, and 5 of which are in the name of R. A. Dunningan and endorsed by him in blank; 3 of them in the name of I. Hansen, endorsed in blank; and 2 in the name of A. A. Julian and endorsed in blank; were offered and received in evidence as Plaintiff's Exhibit No. 43, the said Exhibits Nos. 42 and 43 being offered and received under the following circumstances:

Mr. Cannon: * * * I stipulate no further foundation need be laid for them, but I object to them on behalf of all of the defendants on the ground that they are hearsay as to them and have no probative value in the case.

The Court: They may be received.

Mr. Cannon: Exception. (Tr. 794) [124]

Mr. Cannon: At this time I will stipulate on behalf of all the defendants that no further foundation need be laid so far as the stock certificates themselves are concerned, but I object to the offer, if there be an offer in evidence, on the ground that they are hearsay as to each and all of the defendants in this case.

Mr. Evans: I offer them at this time.

The Court: They may be received.

Mr. Cannon: Exception. (Tr. 795)

(Testimony of Lewis J. Hampton)

(Witness continuing)

The four checks, Exhibit No. 42, total \$350.00 and were given by me to Mr. McEvoy for stock that I purchased in Union Associated Mines. The stock was bought about the dates of those checks. I know the defendant Collins, and I met him, Murphy, Siens, and Bray, at the office of the Plymouth Oil Company in Los Angeles. McEvoy called at my house first, a short time before the first check was issued, shortly prior to January 16, 1939.

Mr. Cannon: If the Court please, may I have a running objection to any conversations had between this witness and anyone else who is not a defendant in this case?

The Court: Yes.

Mr. Cannon: May it be understood that an exception is taken to your Honor's ruling allowing the evidence to go in?

The Court: Yes. (Tr. 797)

(Witness continuing)

I also met Mr. Fischgrund in the office of the Plymouth Oil Company. (Tr. 798)

Q. Tell us what happened on the occasion of your call at the Plymouth Oil Company offices. [125]

A. Well, they told me they had plenty of finances—

Mr. Cannon: I will object on the ground it is too general, if the Court please.

The Court: Who was telling you this?

The Witness: Mr. Collins. He said they had unlimited funds.

(Testimony of Lewis J. Hampton)

A. Well, of course, Collins and McEvoy did most of the talking. They presented the case. They presented the situation that they had a 50 per cent interest in these wells with no deductions, and that they had plenty of money back of it to drill all the wells that they wanted to drill if it was not wild cat, and this company would share in 50 per cent of the earnings. (Tr. 798-799)

(Witness continuing)

By "this company" is meant Union Associated Mines Company. They told me where the wells were located in the Torrance Field, and I bought some stock on this occasion but I did not get the delivery of it right away. McEvoy brought the stock to my house. On the second trip to the office, it was practically the same thing, and I bought some stock again. I did not have any conversation with Fischgrund, to any extent, it was mostly with Collins, McEvoy and Murphy. I went to the Plymouth offices alone, the first couple of times, but later I was there with Dr. Williams and Mr. Peet. I think Williams and Peet were there on two occasions, and at the same time Collins and McEvoy were there. On the second visit to the office, it was reported by Collins and McEvoy to be producing 350 barrels. I did not make any trips to the Torrance Field myself. The statement that the Plymouth Well No. 1 was making 350 barrels was repeated in the presence of [126] Williams and Peet. I was asked to come to the Plymouth, and met Mr. Barclay. McEvoy asked me to call at the office. This was after I had bought the first two blocks of stock, and I waited there several hours to meet Barclay, and quite a number of other gentlemen that were reported to me to have been down talking to Lacey. When Barclay came in he said

(Testimony of Lewis J. Hampton)

the stock was approved for listing on the Salt Lake Exchange and would be called within the next two or three days, and he was in a hurry to get back to Salt Lake to be there to handle the call (Tr. 804), and said it would be called at 7 or 9 cents a share; that the stock was ridiculously low and it ought to be selling at 25 cents. At a time between the second and third purchases that I made of stock, and while Collins, McEvoy and Murphy were present, it was stated that Plymouth Well No. 2 was producing 550 but that it was good for a thousand barrels on a test. Altogether I purchased 15,000 shares, at 2½ cents a share, and I naturally relied upon what was told to me in the making of the purchases, and made no independent investigation of Union Associated Mines Company or of the Plymouth Oil Company. Government's Exhibit No. 44 for identification is a letter dated July 12, 1939, which I received at my house in Los Angeles, on or about the postmarked date of July 12, 1939. It is on a letterhead of the Union Associated Mines Company, and dated July 12, 1939, signed "Union Associated Mines Company, by J. H. Morgan, Secretary."

Mr. Cannon: I object to it on behalf of all the defendants separately and jointly on the ground that there is no proper and sufficient foundation laid for it, and it is immaterial and irrelevant in the case.

* * * * *

Mr. Cannon: There is no foundation laid for it. [127]

The Court: Is that one of the indictment letters?

Mr. Evans: Yes.

The Court: You will have to show it was mailed.
(Tr. 807)

(Testimony of Lewis J. Hampton)

Cross-Examination

By Mr. Cannon:

In addition to the 15,000 shares I bought, I think I bought an additional 1,000 shares from Hogle's office, or through a man named Bud Whittaker there. It may have been from him personally. I do not remember the exact date but it may have been in October, 1938. It was a month or so before I bought this stock from McEvoy. I paid for it by check, at 2½ cents. Whittaker told me that he had heard that the stock was going to be listed and was going to be let loose in Los Angeles, and that they were going to drill some wells at Torrance. I believed him. He said they were going to drill some wells, and I believed that. I knew very little about the Torrance Field at that time. All I knew about it was were the ordinary oil reports. I subscribe to all oil journals, and have for about twenty years. I do not recall that Whittaker told me anything else other than what I have said. I think I made my purchase from Whittaker in November, 1938. After that purchase I watched in a general way the progress of the Torrance Field, as reported in the Oil Journal, but I was in Kern County practically all of the time. (Tr. 813) I did not pay any particular attention to the investment that I had made in the stock in November, 1938, but when McEvoy talked to me, naturally my interest in the stock increased. I have owned oil stock over a period of years, and I have been buying and selling and trading-in stock. I bought this stock from Whittaker with the idea of making a profit. I don't know whether I [128] bought it from Hogle & Company, or whether I bought it from Whittaker personally. I surely remember everything very distinctly that McEvoy told me, and also

(Testimony of Lewis J. Hampton)

everything that Collins told me, but I cannot remember now whether Whittaker delivered the stock to me, or whether Hogle & Company did. The statement which I made to the S. E. C. on October 19, 1939, was made when my memory was much clearer than it is now. I have dealt with Hogle & Company for some time, at their place of business on Sixth Street in Los Angeles. (Tr. 817) When I went in to buy this stock from Whittaker, I did not ask him anything about any cheap stock that I could buy. I cannot remember that, although the statement which I gave to the S. E. C., in October, 1939, states that I asked Bud Whittaker, a customers' man, "what cheap stock looked good." (Tr. 818) There was nothing that Whittaker told me that caused me to buy this stock. It was only a small matter. The fact that he told me the stock was to be listed on the Salt Lake Exchange, according to report, together with the drilling down there, had something to do with my buying the stock. Whittaker also probably told me, as I stated in my statement to the S. E. C., that a lot of the boys in Salt Lake City were purchasing Union Associated stock. (Tr. 820) I do not remember whether I sent the 1,000 shares of stock for transfer to my name, but it is probably true, as stated in my letter to the S. E. C.: "It was this stock that Mr. Hampton forwarded to Salt Lake City for transfer into his own name." (Tr. 820) I do not know where that certificate is now. I may have it somewhere. I never sold it. I do not remember ever getting any literature, but it does seem to me I got a financial statement at one time. I cannot state whether I got Government's Exhibit No. 3 in evidence; I do not remember. I do not recall reading it. I could have gotten [129] the letter. The

(Testimony of Lewis J. Hampton)

property I was working on in Kern County is oil property, actually producing. I do not remember receiving the circular letter of January 6, 1939, Government's Exhibit No. 3. I do not recall the letter at all. I think Whittaker sent this 1,000 shares of stock up to Salt Lake City for transfer into my name. Government's Exhibit No. 20 shows my name as a stockholder of 1,000 shares. Barclay told me that the stock had been approved for listing. He did not say it was about to be approved, but that it had been approved and passed by the Board and would be called. He did not say it was practically approved. I notice the statement that was included in my statement to the S. E. C. on page 3, as follows:

"Barclay, Hampton said, told him that he had just come to Los Angeles and had just finished talking with Roy Lacy."

Then I skip a little bit:

"Barclay told Hampton that the listing application to list the subject company's shares on the Salt Lake Exchange had been practically approved for listing."

A. Had been approved.

Mr. Manster: I am going to make an objection at this time to this type of cross examination on the ground it is irrelevant and immaterial, this distinction between "practically" and "about to be approved." If Mr. Cannon wants to offer the statement in evidence we have no objection.

(Testimony of Lewis J. Hampton)

Mr. Cannon: I will offer it in evidence.

The Clerk: Defendants' G.

(The document referred to was Defendants' Exhibit G, and received in evidence.) (Tr. 826-827) [130]

(Witness continuing)

I think Mr. Duvoisin was a representative of the S. E. C. to whom I talked, and to whom I made the report. Mr. Manster and Mr. Evans called me in the last few days and asked me to appear in this case, and asked me to bring my checks in, and they talked to me very briefly about the statement that I had made to Mr. Duvoisin, and went over that statement with me very briefly, and told me I would be asked certain questions, such as to verify the checks and the letter, and that is practically all. I think perhaps they asked me whether or not Collins had ever told me that the well was 350 barrels.

A. I am not sure that they discussed the production, I wouldn't say definitely that they did.

Q. Now, before you told me they had.

A. I think they read that part of it to me out of that statement.

Q. Read what part of it to you?

A. Where they said it was producing 350 barrels.

Q. They read that to you, are you sure of that?

A. No, I am not. (Tr. 829)

* * * * *

(Testimony of Lewis J. Hampton)

Q. By Mr. Cannon: Calling your attention to this Exhibit G in evidence, the third page, the first sentence:

“During the course of the conversations McEvoy told him that the first well had been brought in on production and was producing 200 barrels of oil per day.”

Did McEvoy tell you that?

A. Yes, he said it was good for 350 barrels, that it was producing 350 barrels. [131]

Q. Said it was producing 350 barrels? A. Yes.

Q. Now, then, whose handwriting is this where that pencilling is around the edge, “350 barrels is correct”?

A. I don't know. (Tr. 830)

(Witness continuing)

I do not remember whom it was that I first told that Collins had said that the well was producing 350 barrels. McEvoy and Collins told me that Well No. 2 was in, and said it was good for 1,000, and producing, and I was asked to go down and see it, but I did not. I was too busy. Torrance is about 10 miles from Los Angeles, and when I was in Los Angeles I had very little time, and did not have time to go down to see the well. I do not know whether I had already bought all of my stock at the time when Collins told me that Well No. 2 was in and was producing 1,000 barrels. I do not know whether I bought any more stock after that, or not.

Mr. Cannon at that time read Defendants' Exhibit G.

[DEFENDANTS' EXHIBIT G]

MEMORANDUM

Date October 19, 1939

To: Mr. Charles R. Burr, Assistant Chief Accountant
Investigator

From: Mr. William Duvoisin, Accountant Investigator

Subject: Union Associated Mines Company

Pursuant to our request, Mr. Lewis J. Hampton, address 1054 South Hudson Avenue, telephone Walnut 2442, called at the Los Angeles office in connection with the subject company. Mr. Hampton had with him the following street certificates which he acquired by purchase from John McEvoy on three different occasions:

No. 4065	1,000	I. Hansen	1-30-39
4066	1,000	"	1-30-39
4067	1,000	"	1-30-39
4068	1,000	"	1-30-39
4069	1,000	"	1-30-39
3396	1,000	A. A. Julian	9-27-38
3397	1,000	"	9-27-38
3398	1,000	"	9-27-38
3399	1,000	"	9-27-38
3400	1,000	"	9-27-38
3808	1,000	R. A. Dunnigan	1-3-39
3807	1,000	"	1-3-39
3806	1,000	"	1-3-39
3805	1,000	"	1-3-39
3851	1,000	"	1-3-39

 15,000

(Defendant's Exhibit G)

Mr. Hampton also had with him four personal checks all issued to McEvoy and endorsed by McEvoy. The first check was dated January 16, 1939 in the amount of \$112.50, the second check January 19, 1939, \$125, the third check February 1, 1939 in the amount of \$25, and the fourth check dated February 9, 1939 in the amount of \$87.50, for a total of \$350. Mr. Hampton stated that the above checks were in payment of three 5,000 share lots of the subject company's stock which he purchased from McEvoy, the first lot at $2\frac{1}{4}\phi$ per share, the second lot at $2\frac{1}{2}\phi$ per share and the third lot at $2\frac{1}{4}\phi$ per share. It has been noted that the schedule 3 forwarded to us by the Denver Regional Office shows only 1,000 shares being registered in the name of Mr. Hampton. This stock, Mr. Hampton said, was purchased by him through Hogle & Co. of Los Angeles in November, 1938 and was transferred by him into his name, solely for the purpose of having his name show as a stockholder, so that he could make inquiry of the company as to its activities. Mr. Hampton recited the following story which caused his investment.

In connection with the first lot of stock purchased through Hogle, Mr. Hampton said that he had an active brokerage account at Hogle & Co.; that during the month of November, 1938, he happened in Hogle & Co's office and asked Bud Whitaker, a customer's man, what cheap stock looked good. Whitaker, he said, told him that a lot of the boys in Salt Lake City were purchasing Union Associated Mines stock. Hampton said that Whitaker made no other representations and that resulted in his purchasing 1,000 shares. It was this stock that Mr. Hampton forwarded to Salt Lake City for transfer into his own name.

(Defendant's Exhibit G)

In January, 1939, Hampton said that John McEvoy telephoned him and requested that he be given the opportunity to talk with him about a mining stock. Hampton said that McEvoy during the course of the conversation made no mention of the stock in which he was interested, but did state that it was an old Salt Lake mining company that was being revised and was going to enter into the oil business. Mr. Hampton said an appointment was made with Mr. McEvoy, and that the following

[written in pencil: house.]

evening McEvoy called at his office. McEvoy, he said, explained that he was working with a man who had a call on a big block of stock of the Union Associated Mines Company. McEvoy said that Union Associated was going into the oil business and was being financed by a wealthy local man. Although the name was not mentioned at that time, the person was later learned to be Mr. Roy Lacey. The wealthy man, McEvoy said, was willing to supply all the necessary drilling money so long as the company did not wildcat. McEvoy also told Hampton that there was an unlimited amount of capital available for drilling operations; that the company had acquired proven leases in the Torrance oil field. Mr. Hampton said that McEvoy made no mention of the company that he was representing. McEvoy told Hampton that the stock of the Union Associated Mines Company would be listed on the Salt Lake Exchange and be called for trading at 6¢ per share. McEvoy said that he was in a position to sell stock to Hampton at 2½¢ per share. Hampton said that his wife was present during the subject conversation, and that he advised McEvoy that he would think the matter over and get in touch with him within a few days.

(Defendant's Exhibit G)

Hampton said that shortly thereafter on January 16, 1939, he called at McEvoy's office in the Foreman and Clark Building, Los Angeles. The office, he said, was adjoining that of Mr. Fischgrund, an attorney. Mr. Hampton said that upon his call at the office he was introduced by McEvoy to James H. Collins and Joseph Murphy. Collins and McEvoy, he said, again told him of the block of stock that they had for sale at $2\frac{1}{2}\phi$ a share. They made no mention, he said, of their participation in the matter or of any company that they were supposed to be connected with. Collins and McEvoy, he said, told him that the Plymouth Oil Company were drilling wells and had transferred to the Union Associated company the 50% interest in one well for a block of stock. The expense of the drilling of the well, Collins told Mr. Hampton, was being borne by the Plymouth Oil Company; that the Union Associated Mines Company would share no expense of the drilling operation, but would share 50% in the return from the well. Mr. Hampton said that he had no idea as to how his money was to be used that he subsequently furnished for the purchase of stock.

Following the conversation with Mr. Collins and McEvoy, Mr. Hampton issued his first check in the amount of \$112.50 in favor of McEvoy covering the purchase of 5,000 shares of stock. The certificates, Hampton said, were delivered to him in street name at McEvoy's office. Mr. Hampton said that McEvoy continued to phone him daily and told him how the first well was progressing. During the course of the several phone conversations, McEvoy told Hampton that all funds received by the Union company from the sale of oil would be disbursed in dividends; that none of the money received as income would be re-invested. Upon such representations, Mr. Hampton

(Defendant's Exhibit G)

said he purchased a second 5,000 share block of stock on January 19, 1939, for which he paid \$125 or $2\frac{1}{2}\text{¢}$ per share. Following the second purchase, Mr. Hampton said that McEvoy continued to phone him at least a couple of dozen times. During the course of the conversations, McEvoy told him that the first well had been brought on

[written in pencil: 350 is correct]

production and was producing 200 \wedge barrels of oil per day; that a second well had already been commenced and that the Union company would participate in that well. Mr. McEvoy offered Mr. Hampton an additional 5,000 shares of stock at $2\frac{1}{4}\text{¢}$ per share. Mr. Hampton said that after much persuasion he made a second call at the office of McEvoy and was introduced to Mr. Barclay, President of the Salt Lake Stock Exchange. Barclay, Hampton said, told him that he had just come to Los Angeles and had just finished talking with Roy Lacey. Barclay said that Lacey had told him that he had unlimited money to back the company in its drilling operations, so long as the company did not wildcat. Barclay told Hampton that the listing application to list the subject company's shares on the Salt Lake Exchange had been practically approved by the listing committee and would be called for trading within a few days. Barclay, Hampton said, told him that the stock was selling at a ridiculous price, and that it should be selling for 25¢ per share. Barclay also told him that the stock would be called for trading at 7¢ or 8¢ per share. Mr. Hampton said that Mr. Collins, Mr. McEvoy, Mr. Siens and a couple of attorneys were present during the time that Barclay made the latter representations. Collins during the course of the conversation stated that the company had already decided to pay a

(Defendant's Exhibit G)

dividend, but that it was being held up until such time as the stock was listed, as the SEC might think that the company was paying a dividend for the purpose of encouraging the listing of the stock. During the course of the conversation, Mr. Hampton was also told by Collins that the second well was about to come in, and that it would probably produce in the neighborhood of 1,000 barrels of oil per day.

Mr. Hampton said that following his conversation with Collins, McEvoy and Barclay, and principally upon the information furnished him by Barclay, he purchased the third 5,000 share block of stock at $2\frac{1}{4}\phi$ per share. He said the stock was delivered to him approximately two weeks later in the office of Mr. McEvoy.

During the course of the interview with Mr. Hampton, Mr. E. C. Deeble, a close personal friend of Mr. Hampton, called at this office and was present during the latter part of the interview. Attached hereto is letter and envelope received by Mr. Hampton from the subject company.

William Duvoisin

William Duvoisin

Accountant Investigator

WD:IB

Note:—On Jan. 7, 1941, Mr. Hampton called by phone and stated his address in future will be General Delivery, Sonora, Calif. J. M. Evans.

[Endorsed]: Case No. 15229-Cr. U. S. vs. Collins et al. Defts. Exhibit G in Evidence. Date Jul. 14, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Testimony of Lewis J. Hampton)

(Witness continuing)

I did not have any friend actually working on the Plymouth wells.

Cross-Examination

By Mr. Blue:

I ran a gold dredge in Sonora for a few months. I have drilled oil wells myself, probably two or three dozen or more, and I have not drilled any dry wells, although some were weak, but they all produced. I drilled them in Kern County, California, and in Texas. While I was busy in Kern County, Mr. McEvoy was calling on me when I was down [132] in Los Angeles for consultation, but I could not find time to go out to the Torrance Field, although I waited in the Plymouth office for Mr. Barclay for several hours. I do not think Fischgrund was present in the Plymouth office at the time that I talked with McEvoy about the well. I do not recall how many people were in the office the first time I met Fischgrund there, but I remember Collins and McEvoy were there, and someone else, but I do not remember who it was. Prior to the last year, I have gone in to see Mr. Fischgrund a number of times to see if there was any possibility of getting any money out of this because I wanted to get my money back, and I never did talk business with him until I went in and asked him for my money back. I do not think he had anything to do with selling any stock, although I think he was present a number of times, but McEvoy and Collins were the two that sold the stock. I naturally knew that McEvoy and Collins were selling stock but I did not know whether or not they were officers of the Corporation. I do not know when well No. 2 came in, and I do not therefore know whether or not I bought

(Testimony of Lewis J. Hampton)

any stock after that well came in. I have been trading with Hogle & Company longer than ten years and I have bought and sold stocks. When I bought this stock from Whittaker he did not say that it was his own stock, and I did not ask him. I have met Mr. Gordon at the Italo Petroleum Company, and I also saw him at the Plymouth office when I went to see McEvoy, but I did not talk with him. I knew Gordon was president of the Plymouth Oil Company. I do not know Mr. Schirm. I do not know that I ever saw him in the offices of the Plymouth. I probably have. I do not know that the purchase of oil stocks particularly is a gamble, necessarily. The 1,000 shares that I bought were bought for an investment and cost me \$25.00. I did not know what Collins [133] was paying for his stock. At the time I bought my stock Collins said he had a contract with Siens for the purchase of about a million shares, on a sliding scale, but he did not tell me that the prices I was paying was the price he was paying.

Re-Direct Examination

By Mr. Evans:

The 15,000 shares for which I paid \$350.00 were bought by me as an investment.

Re-Cross Examination

By Mr. Cannon:

I decided to give it up as an investment when the news came around that Mr. Lacey was not backing it, but I do not remember when that was. I have no idea as to whether I decided that it was not a good investment in 1939 or 1940.

(Testimony of Lewis J. Hampton)

Re-Cross Examination

By Mr. Blue:

I do not know who it was that told me that Lacey was not going to go any further, and I do not recall where I heard it.

(Witness excused.)

MRS. MARGARET FLORENCE PERRI,

recalled as a witness by and on behalf of the Plaintiff, having been previously duly sworn, testified further as follows:

Direct Examination

(continued.)

By Mr. Evans:

I am the same Mrs. Perri who testified a couple of days ago, and I was employed as a stenographer for Mr. Morgan in Salt Lake City from November, 1939, to December, 1939. Exhibit No. 44 for identification, a letter addressed to Hampton, dated July 12, 1939, bearing the signature of J. H. Morgan, was typed by me and placed in an addressed envelope, stamped, and mailed. [134]

(The document was marked Exhibit 44, and received in evidence.)

(Witness continuing)

Exhibit No. 45 for identification is a letter dated March 31, 1939, addressed to Miss Ida M. Apperson, that I signed and typed and mailed.

(Testimony of Mrs. Margaret Florence Perri)

Exhibit No. 46 for identification is a form letter dated August 1, 1939, and is a duplicate of Government's Exhibit No. 6 in evidence, was mailed by me.

Government Exhibit No. 47 for identification, the envelope with cancelled postage bearing the postmark August 12, 1939, addressed to R. W. Peet, was typed by me and stamped and mailed.

Government Exhibit No. 48, a letter on the letterhead of Union Associated Mines Company, dated September 20, 1939, addressed to Mr. Bates, bears my signature. I typed it and signed the letter, and placed the letter in an envelope, addressed it, stamped it and put it in the mail.

Whereupon, Government's Exhibits Nos. 45, 46, 47 and 48 were offered and received in evidence. (Tr. 865)

Cross-Examination

By Mr. Cannon:

Before my marriage my name was Margaret Florence. I was working for Mr. Morgan on January 6, 1939. I mailed out letters in the same form as Government's Exhibit No. 3, being a form letter concerning 2,000 barrels of oil, to all stockholders of record except to those who lived in Salt Lake City and to whom we delivered them; but all of the stockholders of Union Associated got one of those letters, so far as I know. Mr. Lewis J. Hampton, who appears on the stockholders' list (Exhibit No. 20) got one of those letters.

(Witness excused.) [135]

FRANK L. TUCKER,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Frank L. Tucker. I live in Los Angeles. In 1939 I purchased stock of Union Associated Mines Company, after having talked about it to Joseph Murphy. This was in February or the latter part of January, 1939.

Q. And tell me, if you will, the conversation between you and Mr. Murphy with relation to the Union Associated Mines stock.

Mr. Cannon: Objected to, if the Court please, on the ground it is hearsay. It can have no bearing on the issues in the case. May I ask a question on voir dire?

The Court: Yes.

Mr. Cannon: Did you ever talk to any of the defendants before you bought any of this stock?

The Witness: No, sir.

Mr. Cannon: Or with Mr. Adkisson or Mr. Barclay?

The Witness: No, sir.

Mr. Cannon: I object on the ground it is hearsay, no proper or any foundation is laid for it at this stage of the proceedings.

The Court: He may answer.

Mr. Cannon: Exception. May I have an exception running to it all, if the Court please?

The Court: Yes. (Tr. 869)

(Witness continuing)

Murphy said he had quite a block of Union Associated and was going to sell, and wanted to know if I would be interested in taking 10,000 shares at 3 cents; and that

(Testimony of Frank L. Tucker)

he was going [136] to get it approved by the S. E. C. and that the prices would graduate up, he thought, as it went along. At that time I bought 10,000 shares from him for \$300.00. He said they were drilling a well out in Florence. I believe he said they had one well and was drilling on the second one. At a later date, Mr. Murphy exhibited to me a contract, but he did not show it to me at the first meeting. At the first meeting I did not place any order with him for stock, but I did at the second or third meeting. Murphy was alone when he called to see me; he probably called a dozen times altogether. Exhibit No. 49 for identification is a \$300.00 check dated 2-14-39, payable to the order of J. H. Collins, and signed by Frank L. Tucker, and bears the endorsement of Collins, paid and charged against the account of mine. This check was given for the 10,000 shares of Union Associated delivered to me by Murphy. The check was made payable to the order of Collins because, Murphy told me, Collins had the contract for the sale of the Union Associated stock and he was working with him and for him, and Murphy asked me to make out the check to Collins. I thereafter received my certificate for 10,000 shares. At the time of this purchase on February 14, 1939, I believe Murphy said that the well was making about 255 barrels per day, and later he told me something about the second Plymouth well. He told me that Gordon, Siens, Lacey, and somebody else were the officials of the Plymouth Oil Company; and said Lacey was furnishing the money for the drilling operations. He told me that Collins' contract was for stocks from about 3 cents to about 26 cents per share; and that under that contract they, he and Collins, had to take about 83,000 shares per

(Testimony of Frank L. Tucker)

month, until the contract was filled. (Tr. 874) I had not met Collins up to this time. I first met him some time after I had bought all of my stock. It was either in May [137] or June. Government's Exhibit No. 50, a check dated February 20, 1939, drawn by me to R. L. Colburn Company in the amount of \$147.50 was delivered to Murphy.

Q. And will you state the occasion for your delivering such a check to him—

Mr. Cannon: Objected to on the ground it is hearsay.

The Court: He may answer.

Mr. Cannon: Exception. Go ahead. (Tr. 876)

(Witness continuing)

Murphy said there was stock in Salt Lake that they wanted to pick up and he would rather pick it up through some brokerage firm, and suggested that I bid $2\frac{1}{2}$ or $2\frac{3}{4}$, and asked if I had any objection to what brokerage he put the order in through, and I told him I did not. So, when the order was confirmed, I gave him a check to deliver to the brokerage firm that he had picked out. I did not pick out R. L. Colburn Company. Murphy delivered the confirmation to me and I thereupon issued my check, Exhibit 50. I bought 5,000 shares through Colburn Company. Government's Exhibit No. 51 appears to be a duplicate deposit slip on the Bank of America bearing the date of February 28, 1939, and states, "Certified Check, \$1650." I got this certified check to pay for stock of the Union Associated. Murphy came to see me and said they lacked 55,000 shares of having the stock picked up for that month, and I gave him a check, payable to Siens, for this 55,000 shares. I visited the Plymouth wells in Torrance in the latter part of February

(Testimony of Frank L. Tucker)

and again in March, 1939. I have met Guy Davis, secretary-treasurer of Plymouth Oil Company, at the field, and he told me that he was in charge down there, and I asked him what the wells were doing. He did not seem to want to talk about it, and finally I told him I had bought 65,000 or 70,000 [138] shares. Then he said the first well was making around 145 to 150 barrels, and the second well was making about 255 barrels. This was around the first of March, 1939. I did not talk to him about dividends of Union Associated, but I told him I had bought the stock at 3 cents a share, and he said the way those wells were going it should pay some dividends immediately, and it might be as much as 3 cents a share. or something to that effect. Altogether I think I purchased 70,000 or 74,000 shares. Government's Exhibit No. 52 is a confirmation upon the stationery of R. L. Colburn & Company for 5,000 shares of Union Associated at \$147.50, under date of February 20, 1939. I received it by mail. In buying this stock I placed reliance upon statements made to me by Murphy and also on what I saw of the wells. I did not place reliance upon statements made by any of the defendants in this case, because I had never talked to any of them, and I did not know any of them. I did not rely upon anything that Davis told me because I had already bought my stock prior to the time I met him.

Mr. Evans: Your Honor, at this time I wish to offer in evidence Government's Exhibits 49, 50, 51 and 52.

Mr. Cannon: I will object on the ground that they have no bearing on the issues in this case at all, particularly in view of the last few statements made by this witness that he never talked to any of the defendants

(Testimony of Frank L. Tucker)

and never relied on any representations made by any of the defendants in the purchase of the stock.

The Court: All except Murphy.

Mr. Cannon: He is not a defendant. I said the defendants.

The Court: Objection overruled.

Mr. Cannon: Exception. [139]

(The documents referred to were marked Plaintiff's Exhibits Nos. 49, 50, 51 and 52, and were received in evidence.)

Q. By Mr. Evans: Mr. Tucker, do you still have the stock of Union Associated Mines Company which you purchased? A. No, sir.

Q. What did you do with it?

Mr. Cannon: I will object to that as being immaterial.

The Court: He may answer.

The Witness: I took a note from the Plymouth Oil Company. (Tr. 883)

* * * * *

Mr. Cannon: I will move to strike the testimony of this witness heretofore given with respect to what happened to the stock. It is long after the date laid in this indictment, May 1, 1941.

The Court: It may stand.

Mr. Cannon: It may stand?

The Court: Yes.

Mr. Cannon: Exception. May I add to that objection, and may it be deemed to have been made before the ruling, that it is hearsay as to all the defendants?

The Court: Yes.

(Testimony of Frank L. Tucker)

Mr. Evans: Will you mark this, please?

(The document referred to was marked for identification as Plaintiff's Exhibit No. 53.)

Q. By Mr. Evans: Calling your attention to Government's Exhibit No. 53 for identification, which appears to be the note you have mentioned, is it correct, Mr. Tucker, that you surrendered your stockholdings in Union Associated Mines Company in return to this note?

A. That is right. [140]

Q. Did you receive any cash in addition to this note?

A. No, sir.

Q. Has this note been paid, or any part of it been paid to you as yet? A. No, sir.

Mr. Cannon: May it be understood that my objection goes to all of this line and also an exception to it?

The Court: Yes. (Tr. 884-885)

Mr. Cannon: I move to strike all the testimony of this witness on the ground that it has no probative value in that it is wholly incompetent, irrelevant, immaterial and hearsay as against all of these defendants, no reliance having been placed by this witness upon any representations made by any of the defendants, and it further appearing that no representations of any kind were ever made by any one of these defendants to this witness.

I think that covers the suggestion made by Mr. Blue that I add to it, if I haven't already done so, that it is hearsay, because it doesn't appear that Mr. Murphy was ever authorized to speak for any of the defendants, nor does it appear that any of the defendants knew of any of the representations made.

(Testimony of Frank L. Tucker)

The Court: The motion will be denied insofar as the testimony goes to the surrender of the stock. On the securing of the note, that part may be stricken. (Tr. 886) [140a]

Cross-Examination

By Mr. Cannon:

I relied in buying this stock upon the statements that Murphy made that they had a well down there making about 250 barrels a day. He told me this before I bought any stock, and he also brought me down and showed me the well and told me that he thought the stock was going up. He said they had a contract to sell a block of Union Associated, and wanted to know if I would be interested in buying 10,000 shares; and they hoped to get it approved by the S. E. C.; and that he had a contract to purchase the stock on a graduated scale. Murphy also said that Gordon, Siens and Lacey were behind the wells down there, but I do not think he told me they were officers in the Plymouth. I do not think I relied on those statements. Murphy told me that Lacey was putting up the money to drill the wells, and I believed that, and I found it to be true. I saw the contract for the purchase of the stock, from 3 cents up to 25 or 26 cents. I do not know whether or not I read the contract, but I read part of it, and saw the graduated scale part of it. I had bought 10,000 shares before I saw the contract, and I bought the other 64,000 or so after I had seen the contract; and I bought that 64,000 or 65,000 shares at a price no greater, and in some instances less than the call price under the contract that Murphy had. I paid no [141] premium for the stock. I believe I bought all of my stock in February, 1939. Murphy told

(Testimony of Frank L. Tucker)

me that they had bought a certain amount of stock but had not been able to pick up the rest of it and asked me to furnish the money to buy the additional 55,000 shares required under the contract.

Q. By Mr. Cannon: Under the contract Murphy said that they required 83,000 to be purchased each month?

A. That is right. (Tr. 890) [141a]

* * * so I bought that stock at the contract price in the Murphy contract, and paid the money over to Mr. Siens, with whom Murphy had his agreement. I bought this stock as a speculation, pure and simple, and I put in, I think, \$2,445.00 altogether. (Tr. 891) I do not know how much Murphy himself put into it; nor how much Collins put in.

DR. DELMAR E. WILLIAMS,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Delmar E. Williams, and I am a physician and surgeon, and live in Los Angeles. I am acquainted with Ray W. Peet who died approximately a year ago. I own 5,000 shares of stock in Union Associated, which I purchased in January, 1939.

(By stipulation Plaintiff's Exhibit No. 54, a check drawn by the witness for \$125.00 payable to the order of John McEvoy, dated January 26, 1939, endorsed by McEvoy, and Exhibit No. 55 covering 9 certificates of stock, dated August 11, 1939, in the name of the witness, were offered and received in evidence.)

(Testimony of Delmar E. Williams)

(Witness continuing)

I delivered this check to McEvoy and prior to that I had a conversation with him.

Mr. Cannon: To save some time, I object to all this testimony of this witness as to any conversations with Mr. McEvoy [142] out of the presence of the defendants on the ground that it is hearsay as to them, irrelevant and immaterial and incompetent for that reason; may it be understood that my objection runs to the entire line of testimony along that line, and may I have an exception to the rulings?

The Court: Yes. (Tr. 893-894)

(Witness continuing)

Two or three days before January 24, I had a conversation in the Plymouth office. Mr. Peet and Mr. Hampton were there, and I talked principally with McEvoy. Collins was there and Murphy was there, at some time during our conversation. McEvoy told me that they were selling some of this stock largely to get a wide circulation so that it might be put on the Salt Lake Stock Exchange. He said they were associated with the Plymouth Oil Company, that had two wells, one well down here and that it was at that time pumping about 500 barrels of oil, and were drilling a second well, that they thought was about ready to come in; that Lacey had \$75,000.00 invested in the Plymouth Oil Company and had received a large block of stock, and in order for Lacey to receive anything out of it by way of profit, the stock would have to sell for more than 25 cents a share, and that it would be very soon listed on the Salt Lake Exchange at 7 cents a share. Several days after that McEvoy called me on the phone and told me that they had brought the second well in, and that it was producing 500 barrels a day, and

(Testimony of Delmar E. Williams)

if it were put on full capacity it would easily go to 1,000 barrels a day, and that some of his acquaintances or friends had some stock in the Union Associated Mines that they would like to convert into money, because they needed money badly, and he could get that stock for 3 cents a share if I wished to purchase it; but I did not make any [143] further purchases. Mr. Ray Peet also purchased some stock of this company.

(At this point, Plaintiff's Exhibits No. 56 and No. 57 were offered and received in evidence; Exhibit No. 56 being 2 checks issued by Peet; and Exhibit No. 57 being 5 stock certificates of Union Associated Mines Company each for 1,000 shares in the name of R. W. Peet.)

Cross-Examination

By Mr. Cannon:

I think I made a statement to the S. E. C., but I could not give you the date of it. It has been almost five years. I made some statement. I do not know the date. I have not seen the statement recently, but I have been interrogated on the statement within the last few days. Evans talked with me about it in the last few days. I asked him questions about the statement that I had made in my former statement, and told him I was a little hazy and did not know whether I would be able to recall or remember the transactions very accurately. He did not particularly refresh my recollection as to what was said to me at the time I bought the stock, but he may have. I cannot tell you what Mr. Evans said. He did not read

all of my statement to me, but he read some questions. I just cannot tell you what things Mr. Evans refreshed my recollection on.

(At this time, Mr. Evans read Plaintiff's Exhibits 30, 33 and 44.) [144]

[PLAINTIFF'S EXHIBIT NO. 30]

Wm. Weeks,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY

Telephone Wasatch 2130

Suite 526 Utah Oil Bldg.

Salt Lake City, Utah

August 1, 1939

To the Stockholders of Union Associated Mines Co.:

The following is a report of your Company since the No. 1 well at Torrence Field, Los Angeles County was drilled.

The No. 1 well has produced \$8,241.44 as shown by the books of the Standard Oil Company, (Oil Purchaser). Union Associated interests amount to \$4,115.22. From this amount, your Directors have declared a dividend payable August 30, 1939, of \$1.00 per thousand shares on the issued and outstanding stock of record, (except the 635,000 shares delivered to the Plymouth Oil Company on Well No. 2. which 635,000 shares was delivered ex-dividend as per contract between the two Companies).

(Plaintiff's Exhibit No. 30)

Transfer books of the Company will be opened for transferring stock until August 23, 1939.

The No. 2 well has produced \$5,290.00 to date. This amount has been applied to costs of drilling as per original contract whereby Union Associated acquired its interests in No. 2 well.

The 40 acres in Kern County remain unchanged, no well having been completed to prove or disprove the District. The lease at Lomita has been abandoned because the drilling in that area has proven unfavorable. From present appearances, the Union Associated will not acquire any interest in the West Montebello Field because the test well (Goff Course Well) is reported unfavorable at 8200 feet. This has been quite disappointing, as your Directors had intended making a very favorable deal with the Plymouth Oil officials on acreage in that District had the test well been successful.

There has been a contract let to drill the Beacon Dome, located on the Meridian Anticline Uinta County, Wyoming. Through the efforts of the Plymouth Oil Company and the writer, your Company has acquired a 40-acre lease favorably located on that structure immediately adjacent to the land acquired by the drilling company. We are, also, negotiating for an 80-acre lease on Sulphur Creek Dome, which, from present appearances will be drilled this fall. These leases will cost the Company no stock and not to exceed \$100.00 each.

(Plaintiff's Exhibit No. 30)

The Company has protected its mining claims in the Cottonwood and Erickson Mining Districts. These are the most important claims the Company owned during its metal-mining activity.

As heretofore stated, the present policy of the Union Associated is to acquire interests in oil wells or leases prior to drilling, with the expectation of big returns should the wells prove commercial. Of course, each attempt will not be successful, but adhering to the law of averages, we feel that this Company can be made a success.

In the future, the Company will attempt to get out a report as often as possible, but it is quite impractical to answer each individual letter, so please bear with us until a report to all the stockholders can be sent.

The cost of transferring stock is 25 cents for each certificate and 12 cents Federal transfer tax per 1000 shares.

Very truly yours,

UNION ASSOCIATED MINES COMPANY,

By J. H. MORGAN, Secretary.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 30 Identification. Date Jul. 12, 1944. No. 30 in Evidence. Date Jul. 12, 1944. Clerk, U. S. District Court, Sou. Dist of Calif. E. M. Frankenberger, Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 33]

R. R. Bray,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY

Telephone Wasatch 2130

Suite 526 Utah Oil Bldg.

Salt Lake City, Utah

March 22, 1939

Miss Grace T. Walker
1400 Hillcrest Avenue
Pasadena, California

Dear Madam:

Enclosed find certificates in the name of Grace T. Walker, 26,667 shares; Bessie G. McLean, 5,333 shares; Katherine C. Davis, 4,000; and Matilda M. Klinger, 4,000 shares of Union Associated Mines Company stock, as transferred.

Very truly yours,

Margaret Florence
Transfer Agent

enclosure

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 33 Identification. Date Jul. 12, 1944. No. 33 in Evidence. Date Jul. 12/44. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

[PLAINTIFFS' EXHIBIT NO. 44.]

[Envelope]

526 Utah Oil Bldg.
Salt Lake City, Utah

[Stamped]: Salt Lake City Utah Jul 12 11:30 AM
1939

Lewis J. Hampton,
1054 So. Hudson Ave.,
Los Angeles, California.

R. R. Bray, President

J. H. Morgan, Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY

Telephone Wasatch 2130
Suite 526 Utah Oil Bldg.
Salt Lake City, Utah

July 12, 1939

Mr. Lewis J. Hampton
1054 South Hudson Avenue
Los Angeles, California

Dear Sir:

Answering your recent inquiry, this is to advise you that since the new management took over the Union Associated Mines Company in the Fall of 1938, they have, in conjunction with the Plymouth Oil Company of Los Angeles, drilled two wells in the Torrence Oil Field, Los Angeles County.

(Plaintiff's Exhibit No. 44)

The first well has netted the Company \$3923.00 to date. The second well cost approximately \$37,000 and has not yet been paid for. Your Company will receive no payments until the well is paid for.

Our expenses to date have been \$1603.00, which included re-establishing the old corporation, protecting the mining claims controlled by the Union Associated, office expenses, application for registration with the S. E. C., and application for listing with the Salt Lake Stock Exchange.

The Company has been somewhat disappointed in the returns from the two wells and has not been able to pay a dividend as soon as they expected. However, the Company does expect to pay a dividend as soon as the money has been earned from its two wells.

Very truly yours,

UNION ASSOCIATED MINES COMPANY

J. H. MORGAN

J. H. MORGAN,

Secretary

JHM-mf

[Endorsed]: Case No. 15229 Cr. U. S. vs. Collins et al. Pltfs. Exhibit No. 44 in evidence. Date Jul. 14, 1944. E. U. Frankenberger, Deputy Clerk.

[Endorsed]: Filed May 11, 1945. Paul P. O'Brien, Clerk.

ERLENE BATES,

a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Mrs. Erlene Bates. I live in Los Angeles, and I bought 17,000 shares of Union Associated stock. I am acquainted with Collins. I was first approached in connection with the sale of this stock by Logan Metcalf, near the end of 1938, and I had a conversation with him about the company; and I met Mr. and Mrs. Collins about the same time. The Plymouth Company was discussed when we were all together. They told me that there was one well active at the time, I think producing 350 barrels a day, and another well being drilled at the time, and that the stock would be listed on the Salt Lake Exchange, probably starting at 50 cents and going to a dollar a share (Tr. 916); that Roy Lacey was a heavy investor in the company. [145]

Q. By Mr. Evans: Was Mr. Lacy identified as being an officer of the Plymouth Oil Company? A. Yes.

Q. What was said in that connection?

A. I believe he was president. That I am not clear on. (Tr. 916) In fact, it was my understanding that he was financing it. I think we discussed the company about three times before I made my purchase; and upon those three occasions Metcalf and Collins were both present. It was after those conversations that I made my purchase. I relied upon the statements made by Collins and Metcalf at that time. Government's Exhibit No. 58 for identification consists of two checks, one dated January 10, 1939, in the amount of \$500.00 payable to the order of Logan

(Testimony of Erlene Bates)

Metcalf, the second check being dated February 20, 1939, in the amount of \$21.00, payable to Logan Metcalf. I signed those checks and delivered them to Metcalf, on or about the dates they bear. The \$500.00 was for the 17,000 shares; and the \$21.00, I believe, was transfer charges. Government's Exhibit No. 48 in evidence is a letter upon the stationery of Union Associated Mines, dated September 20, 1939, [145a] addressed to Mr. Erlene B. Bates. I received that letter through the mail. There is no Mr. Erlene Bates. It was probably an error in mailing. I received Exhibit 48 about the date it bears. Government's Exhibit 59 for identification, a letter on the stationery of Plymouth Oil Company, bearing date February 6, 1939, addressed to me, was received by me on or about the date it bears, through the mail.

Mr. Evans: * * * At this time, your Honor, I wish to offer in evidence Government's Exhibit 58, the checks which have been identified by this witness.

Mr. Cannon: I will object on the ground that it is hearsay and no proper foundation has been laid for it.

The Court: They may be received.

Mr. Cannon: Is that No. 58?

The Clerk: No. 58.

(The documents heretofore marked Plaintiff's Exhibit No. 58, were received in evidence.) (Tr. 919-920)

(At this time, Plaintiff's Exhibit No. 59 for identification was received in evidence.)

(Testimony of Erlene Bates)

Cross-Examination

By Mr. Cannon:

Metcalf introduced me to Collins and Mrs. Collins, and after that introduction we went to a number of places, but I cannot give you the names of any of the places where we went, but I do remember going to a number of places. On another evening we went to the home of Mr. and Mrs. Edwards in San Fernando. On the occasion when I met Mr. and Mrs. Collins through Metcalf, there were no other guests at my house that night. I believe we went out to dinner but I do not remember where. I had not previously bought any stock in Union Asso- [146] ciated, before I met Collins, but I had heard of the Plymouth Oil Company before that through Metcalf who first approached me at the end of December, 1938, and told me he had a good proposition where I could make some money, that they were drilling this well and that they had a well with 350 barrels. That was in the latter part of December. He also told me there was another one being drilled at that time, and that there was no question about the stock being placed on the board at Salt Lake City and that it would go from 50 cents to a dollar or maybe a dollar and a quarter. The usual sales talk was given, I had heard enough of such talks to know that this was the usual oil sales talk. I told Metcalf I would consider it. Collins was not there when I first heard this, nor when I first talked to Metcalf about it. (Tr. 923) No one else was present when I had this conversation with Metcalf. I had met Metcalf four or five years previously but I had not known him intimately or very well. I would only see him occasionally by accident. I do not know his business, but I believe he was in the insurance business. I

(Testimony of Erlene Bates)

had never gone out socially with him. After this first conversation with Metcalf I discussed this matter with him almost every day because he would call me up and try to sell me on the idea, and always told me it was prospering. I cannot give you any date on which he talked with me between January 1st and the 10th of January when I made my purchase. I did not meet Collins on the day I gave my check, January 10th, but I had met him before, but cannot give you the date. I met him at my house and I am sure that Mrs. Collins was there, too. The conversation that I had with Collins or Metcalf when I first met Collins was a general conversation. Mr. Metcalf brought up the subject, and Mr. and Mrs. Collins told me that they had invested in this company quite heavily and [147] they naturally thought it was a good proposition.

Q. Anything else? A. That is about all.

Q. Then when did you next see Collins?

A. I don't remember the date.

Q. Did you see him again before you bought the stock?

A. I think I must have seen him altogether about three times before I purchased the stock.

Q. Are you guessing at that or do you have any distinct recollection of it?

A. I don't remember the dates, but I am positive that I saw him at least three times before I made the purchase.

Q. All right. Now, without respect to the date, tell me what you talked about the next time you met Collins.

A. Oh, the same thing.

Q. The same thing you have related just a minute ago about the conversation you had with Collins?

A. Yes.

(Testimony of Erlene Bates)

Q. Was his wife there the second time?

A. I think he and Mr. Metcalf were alone.

Q. All right. Now, the third conversation you say you had when Collins was present, what did Collins say or what did Metcalf say? A. Along the same line.

Q. Nothing more than you have related about the Collins conversation?

A. No. Nothing was added except that it looked better all the time.

Q. That the second well was drilling more deeply, is that right? A. Yes, likely to come in any way.

Q. Those three times that you met Collins occurred between the December conversation that you had with Metcalf and the time you delivered your check on January 10th, is that right? A. That is right.

Q. Collins was not there when you gave the check to Metcalf, was he? A. No, he was not.

Q. And later on you say you gave a check for \$21.00?

A. That is right.

Q. And what was that for?

A. I understood it was for the fee to transfer the stock.

Q. Who told you that? A. Mr. Metcalf. (Tr. 927-928)

Re-Direct Examination

By Mr. Evans:

I appeared here in response to a subpoena.

Q. By Mr. Evans: You have testified, Mrs. Bates, in answer to Mr. Canon's questions that these various statements were made in your presence upon the occasion of Mr. Metcalf's and Mr. Collins' calls upon you. I

(Testimony of Erlene Bates)

will ask you whether or not the representations in connection with the Plymouth well and what was to be done as to Union stock, as you have testified, were made by Mr. Collins as well as Mr. Metcalf?

Mr. Cannon: Just a minute. I object to it, if the Court please, as either an attempt to impeach his own witness or else it is repetitious.

The Court: She may answer the question.

The Witness: Will you repeat the question?

Mr. Evans: Will you read the question, please?

(The question was read.) [149]

A. Yes. (Tr. 929-930)

Recross-Examination

By Mr. Cannon:

I talked to the prosecuting officials this morning concerning the testimony I was to give in this case but I did not look at any statement that I had made to them some time ago, and I do not know whether they had before them, while they were questioning me, such written statement as I had made before.

(Witness excused.)

MRS. RUTH E. GOODE,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Ruth E. Goode and I live in Los Angeles and was formerly known as Ruth Evans. In September, 1939, I was working for R. L. Colburn & Company, a

(Testimony of Mrs. Ruth E. Goode)
brokerage firm in Los Angeles, and acted as stenographer, made out the confirmations and mailed them, and went to the bank, and did general office work. Government's Exhibit No. 52 in evidence bears my signature. I typed it and mailed it.

(Witness excused.)

MARGARET Y. KERN,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Margaret Y. Kern, and I am employed by Los Cal Petroleum and Oil Royalties Corporation, and my immediate superior is Fred Gordon. In early 1939, I was employed by Mr. Dunnigan; and in February, 1939, by Plymouth [150] Oil Company. I had worked for Dunnigan four years prior to January, 1939, and during that period was associated with him in his office. I know Sidney Fischgrund who had an office at suite 905 in the Foreman Building, in December, 1938. Mr. Dunnigan also had an office there in the same suite. I knew a man by the name of William S. Millener. He may have come into the office at 905 Foreman Building in December, 1938, but I do not remember. I may have seen him around there. I know Mr. Millener. I have never seen him around the offices of the Plymouth Oil Company. I do not remember how often during December, 1938, and January, 1939, that Millener came to Mr. Fischgrund's office.

(Testimony of Margaret Y. Kern)

Cross-Examination

By Mr. Blue:

I have worked for Mr. Gordon since we moved over to the Subway Terminal Building, in the spring of 1939. In the suite 905 Foreman Building, there were four other lawyers who occupied separate offices in that particular suite, each of them paying their own overhead. There was no connection or arrangement or anything between Dunnigan, Fischgrund and these other lawyers. I was acting as Mr. Dunnigan's secretary.

(Witness excused.)

(At this point Mr. Manster read a letter from J. H. Morgan to E. Byron Siens, dated October 14, 1938, appearing in Government's Exhibit 15 in evidence; and a letter from E. Byron Siens to J. H. Morgan, dated October 18, 1938, appearing in Government's Exhibit 14 in evidence; and a letter from Siens to Gordon, dated October 31, 1938, appearing in Government's Exhibit 14 in evidence; and a letter from Morgan to Siens, dated November 14, 1938, appearing in Government's Exhibit 15 in evidence; and a letter dated November 16, 1938, from Siens to Morgan, appearing in Government's Exhibit 14 in [151] evidence; and a hand-written letter dated November 13, 1938, from Siens to Morgan, and a letter from Morgan to Siens, dated November 18, 1938, in Government's Exhibit 15 in evidence, and from the same Exhibit a letter from Morgan to Siens, dated November 25, 1938; and a letter dated November 28, 1938, from Siens to Morgan; and Mr. Cannon read a letter dated December 7, 1938, from Siens to Morgan.)

October 14, 1938

Mr. E. Byron Siens
911 *Forman* Building
Los Angeles, California

Dear Mr. Siens:

Enclosed find certified copy of letter from J. W. Orton to the Union Associated Mines Company certifying that the total outstanding stock of said company is 1,424,229. This total includes the 635,000 issued to the order of Plymouth Oil Company.

Mr. Orton has spent a great deal of time in bringing the stock books up in shape. As I have reported before the matter was much more complicated than it first appeared. He has billed us for an additional \$100.00 on the basis of \$5.00 per day. I have talked the matter over with him and he is willing to wait until the Union Associated has some money in the Treasury. He is now preparing the financial statement which will be submitted to you immediately upon completion.

The most important thing now, as far as I can determine, is the capital stock tax statement of the Union Associated for the Treasury Department. You had better discuss this statement with your accountants. No doubt you understand, that this statement is for the next three year period, and the amount set determines the tax during the next three years. If your statement of capital stock is low and your net profits high your tax is high. If your statement of capital stock is high and your net profits low you can lose money for the company, that way; so it is a question of determining the approximate net profits and making a statement of the capital stock that

will cost the company as little as possible during the next three years.

Certificate 3452 for 10,000 shares in the name of Chris Schirm was sold by Barclay today at 3¢. This, I think, makes the second 10,000 share certificate sold by him at that price. I don't know just what your present plans are, but I am sure the stock could be sold here at 5¢ as easily as it could be at 3¢, if Mr. Barclay would show a little strength at 5¢. The brokers all know that Barclay is representing the California brokers and if he is selling at 3¢ the market goes down immediately. If he is bidding 5¢ the market could easily go to 5¢. It appears that the only source of supply is the Los Angeles Broker's stock through Barclay. I think you have the local market practically cleaned up and with a little strength shown, I believe the market could easily go to 5¢ or higher. Please don't think I am trying to tell you how to handle the market, but I thought you were entitled to the facts as they have come to me.

When you have a minute to spare, I wish you would drop me a line on present developments. I receive numerous calls inquiring as to the present development of the company.

With regards to all, I remain

Very truly yours,

JHM:BP

Encl.

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibits Nos. 178, 178-a. In the Matter of Union Ass'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

PLYMOUTH OIL COMPANY

TUcker 8494
911 Foreman Building
Los Angeles, California

October 18, 1938

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

Dear J. H.:

If nothing unforeseen happens I will put Mr. Gordon and Mr. Adkisson on the plane tomorrow night for Salt Lake City.

They will bring a nice geological report showing all properties the Union Associated are interested in and lots of good news.

One report will be for you and the other for the broker. Just had a call and must run out to the field. Will notify you by wire when the boys leave.

Sincerely

E. Byron Siens

[Endorsed]: Securities and Exchange Commission.
Docket No. D-515. Commission's Exhibit No. 75. In
the Matter of Union Associated Mines. Date 11/15/40.
Witness Electreporter, Inc., Official Reporters.
By Oyler.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

October 31, 1938

Mr. F. V. Gordon

Hotel Utah

Salt Lake City, Utah

My Dear Fred:

I wired you this a. m. to not leave there without calling me, if you were going back to Texas. My reason for this was that Chris said you expected to leave there for Texas without coming through L. A.

Now Fred, here is the situation. Our location is proving better and more certain every day. The three wells, North, South, and East of us are improving every day. The nearest one right East of us called the Louisiana has never stopped flowing.

Now, I have bills from several supply houses for all of the Tubulor equipment including a Lacy pumping unit for our well and it will run around \$14,000.00. I can get from 3 to 6 months on this and I figure if you can get Lacy to guarantee this we will assign our interest in the well or any part thereof until we have paid it all off.

I want to do this for several reasons, first, to make good with Lacy: second, we wont have to sell our stock or at least the bulk of it until/ the well is in and it will bring 3 or 4 times as much money.

What do you think the market on this stock would be if our well was flowing? Well it will be nearer 30 cents than it will be to three cents.

I don't think any one but you personally can show this picture to Lacy so he will realize he is taking no chance even if we can't sell any stock because we can get time enough for the oil to pay this bid off.

We finally switched locations down here in Torrance until we blundered into a sure shot. We will be drilling some time this week. Bryan says he can hit the sand in twelve days if I want him to, but I want to go a little slower and surer so I told him 18 days would suit me all right.

Now Fred, I want you to come and help us over this last jump. We will get the ticket for you so come this way.

Roedecker is back and he got your wire o. k. and he says he will get the lease, but there are so many people to sign it, that it will take most all of this week to get it signed. I wish you could get through down there in Texas and get your shoulder up against this Plymouth wheel and help me because with this 60,000 acre deal and three structures on it, we have a man's job. What do you say?

Very Sincerely,

E. Byron Siens

E. Byron Siens

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibit No. 46. In the Matter of Union Assd. Date 11-7-40. Witness Gordon. Electreporter, Inc., Official Reporters. By Middleton.

Nov. 14, 1938

Mr. E. Byron Seins
911 Foreman Building
Los Angeles, California

Dear Mr. Seins:

Your last two telegrams have been a revelation. The natives here can hardly appreciate that the well is being drilled so fast. I have tried to keep in contact with everybody who might be interested, and have given the Salt Lake Tribune the report. They will run an article in tomorrow's Tribune, and another article will be run by the mining paper here Thursday.

It will take a little time to recover from our first setback on the market, but I am sure that all those who have stock and are receiving the reports will become more interested and start buying. However, I do think that a few orders from Los Angeles would strengthen the market more than anything.

It looks quite possible that I may be in Los Angeles within the next day or two, so I will delay answering your letter until my arrival. In the event that it is impossible for me to get away, I will answer your letter within the next two days.

Please give my best regards to Mr. Adkisson. Expecting to see you in the near future, I remain.

Sincerely yours,

JHM-mf

Securities and Exchange Commission. Docket No. D 515. Commission's Exhibit No. 181. In the Matter of Union Ass'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

November 16, 1938

Mr. J. H. Morgan

526 Utah Oil Bldg.

Salt Lake City, Utah

My Dear J. H.:

Was expecting you down and will be most pleased to see you whenever you can come.

Does the drilling of the well cause any movement of stock up there? I had hoped they would wake up and give us a little play when we actually started, but I guess it did not make much difference. Do you keep in touch with Barclay? You did not say what you thought of my idea of a letter to the stock holders. I think it is very important that we keep in touch with them, but as stated in my last letter I believe it would be better for you to do the letter writing as the Secretary.

When we are ready to pay this first dividend we will get lots of new stock holders. I mean all of this stock that was made out to Schirm will be transferred to the new owners; that is if we sell it.

We haven't sold enough stock to grease the Walking Bean yet. Well, one thing is certain, if we can't sell it we will own it and when the well comes in we will draw the dividends ourselves.

If our well is half as good as our neighbors; we will have \$6,000 per month to pay out in dividends. I wonder what our stock would bring after about 3 dividends and our second well in the sand. If we can drill about 4 wells in this locality we will have a humdinger company. Well, personally I don't see why we can't do that and I have been watching these fields close and I don't know of any place I would rather have our Company drilling, (everything considered) than right where we are. Of course there are larger and deeper districts, but look what they cost.

Well, we are waiting for you to come and see us.

Very Respectfully,

E. Byron Siens.

E. Byron Siens.

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 88. In the Matter of Union Assd. Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

Nov. 18, 1938

Mr. E. Byron Seins
911 Foreman Building
Los Angeles, California

Dear Mr. Seins:

Enclosed find copy of the letter which was sent to the stockholders. After the letter had gone out, I was re-checking with myself, and I feel that we have made a serious mistake in not using the word "should" instead of "will" in the next to the last paragraph, which reads, "which will mean the beginning of dividends for all of our loyal stockholders."

The Government regulations regarding promises of dividends is pretty serious, and this may interfere with our listing of stock.

I wish you would have your attorneys check in these letters to be sent through the mail. Even with all of us checking, we can't be too careful when the matter is to go through the mail.

We are all certainly glad to learn of the depth of the well, and the wonderful progress you are making. Please don't let my worry over the stockholders' letter detract from our appreciation of the wonderful work that you are doing. Of course, I know that you feel that dividends Will be paid, but as a matter of precaution, and keeping us in a position to place the stock on exchange, we just can't be too careful.

With best wishes to all, and still expecting to be in Los Angeles in the near future, I remain,

Sincerely yours,

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 183. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

Nov. 25, 1938

Mr. E. B. Seins
911 Foreman Building
Los Angeles, California

Dear Mr. Seins:

Because I have been expecting to be in Los Angeles and see you almost every day during the past week, I have delayed writing you about the financial statement and particularly about the mining claims held by the Union Associated.

Under separate cover, I am enclosing a financial statement as prepared by Mr. Orton. This is merely in work sheet form for your auditors and attorneys to examine, and will be completed upon the return with whatever suggestions you may have.

The matter which came up in relation to the claims, and which is extremely serious, is as follows. The Union Associated issued practically two-thirds of its capital stock in acquiring the mining claims which it controlled. In making a statement to the Stock Exchange and to the Securities Exchange Commission, it becomes absolutely necessary to retain or have the claims on which this stock was issued. The old Board of Directors had failed to retain any mining claims in the company since the patented claims which they had acquired, not by the exchange of

stock, but by advancing money to the Confident Mining Company for the purpose of development.

When Orton presented the matter to me, I immediately got busy and commenced relocating the claims held by the company, and which had been exchanged for stock. I did this in order to protect the company and ourselves in regard to the outstanding stock. It was necessary to go to the property and erect monuments on the locations, and record the same to the County Recorder in the County in which the claims were located. To date, this has cost in excess of \$60.00.

I am enclosing a statement of the receipts and expenditures of the money you have advanced to the Union Associated which will show that we owe approximately Dollars. I will appreciate receiving your check if you are possibly able to do so at this time.

Everyone here appreciates the telegrams that we have been receiving on the rapid advance of your drilling program, and I have attempted to give it the widest distribution possible.

With kindest personal regards, I remain,

Sincerely yours,

JHM-mf.

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibits Nos. 184, 184-a. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

November 28, 1938

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

Dear Mr. Morgan:

I received your letter of the 25th with the financial statement inclosed. I will arrange this balance satisfactorily for you in the very near future.

Mr. Adkisson took me down yesterday for an interview with a Mr. Wooley who he had given, I believe, 10,000 shares of your stock and who had promised to run our stock up to ten cents a share. Mr. Wooley was much put out because we had advised the stock holders what we are doing for their benefit.

He said that he had sold these 10,000 shares of stock and gone back East to see the old stock holders, but was only able to buy, I believe he said 28,000 shares, at less than a cent and a half a share. He then said that the last letter sent out by you made it simply impossible to do any further business with them. He also stated that he was very sorry that if he had known you were sending out this letter he would have advised you not to do so.

I told him that I thought it was your intention to protect these stock holders against just such procedure.

He claimed he had been down to see our well and was very well pleased but strongly urged us to never let the stock holders *now* when the well came in or in fact ever give them any information. Of course, I know that Mr. Adkisson planned that we would get some benefit from Mr. Wooley's connections, but Wooley very frankly told us, and he said he believed in being frank, just what he had been doing.

I wired you today that we were 4730 feet deep. We were *compelled* to throw out this old string of drill pipe and should have had this well finished about three days ago, at least cemented off on the sand. I think we will be on the top of the oil sand some time tomorrow and then we will have a very easy drilling from then on. I will, of course, keep you posted.

Sincerely,

E. Byron Siens

[Endorsed]: Securities and Exchange Commission.
Docket No. D515. Commission's Exhibit No. 91. In
the Matter of Union Assd. Mines Co. Date 11-22-40.
Witness Davis. Electreporter, Inc., Official Reporters.
By Morris.

PLYMOUTH OIL COMPANY

Tucker 8494

911 Foreman Building
Los Angeles, California

December 7, 1938

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

My Dear J. H.:

We have had a rather hectic day and it is now five o'clock and Guy Davis is down at Mr. Lacy's, who arrived back by plane last night, but did not get to the office until this afternoon. So we have done nothing towards completing the well, but in fact, I did not expect to until tomorrow.

I inquired carefully into the stock situation from the Hogle Company and find the facts to be that there was 10,000 shares of Los Angeles stock sold in Salt Lake last week, but to offset this, the employees of Hogle and Company purchased for their own account, 15,000 shares in Salt Lake.

So that Wooley conversation was just hooey. I forgot to state that this 15,000 shares that they bought was sold by Salt Lake people to Los Angeles people. No doubt it was Mr. Wooley's stock.

We will not drill in this well, of course, until we have had some definite word from you regarding the proposed deal.

Very Respectfully,

E. Byron Siens

E. Byron Siens

EBS/AES

[Written]: Got \$2,000 from Lacy this morning.

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 96. In the Matter of Union Ass'd Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

FRANK VELOZ,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Frank Veloz. I live in Beverly Hills and I am a ballroom dancer, and I purchased about 25,000 shares of Union Associated stock. I know James Collins very slightly but prior to the purchase of that stock I had not known Collins. I had met him once at the Ambassador Hotel. I had known Joseph Murphy about 12 to 15 years, and I had a conversation with him with respect to the Union Associated Mines and the Plymouth Company, the first conversation being in the early part of 1939.

Q. Tell us what Mr. Murphy told you with relation to the securities of the Union Associated Mines Company?

Mr. Cannon: Pardon me just a minute, Mr. Veloz. [152]

The Witness: Yes.

Mr. Cannon: If the Court please, I make an objection to this testimony on the ground it is hearsay as far as Mr. Collins is concerned, whom I represent, and also it is hearsay as to all the other defendants in this case, and I object on that ground.

The Court: Very well. Overruled.

(Testimony of Frank Veloz)

Mr. Cannon: May I have an exception?

The Court: Yes.

Mr. Cannon: And may I have an understanding that the objection runs throughout the testimony of this witness with respect to the stock and also all other matters as being hearsay, and an exception taken?

The Court: Yes.

Mr. Cannon: Thank you. (Tr. 957-958)

(Witness continuing)

Murphy was a good friend of mine and he told me he was associated in this particular proposition; that the chap involved did not have sufficient money to keep a contract which he had to purchase a certain amount of stock each month, and mentioned Collins' name. Murphy said that Collins had to purchase so many shares each month, and that he and Murphy didn't have sufficient cash so they needed \$1,000 to meet the obligation, and he told me that if I would let them have the \$1,000, he would pay it back in ten days or give me 25,000 shares of stock. I received that stock, but I did not receive back the \$1,000. It was a little bit confused as to the wells that were drilled, but it was said that they had a couple of wells already producing, and they were going to drill another one, and the stock was supposed to go on the Exchange. I think it was said that a few hundred gallons, that is from 1 to 300 gallons or barrels were being produced. [153] Murphy told me that the stock in a few days was going on the Salt Lake Stock Exchange, and it was going on at a higher price than I paid for it, and that he was going to dispose of some of the stock that he had and pay me back the \$1,000, or if I wanted to keep the stock, I could do that and make a profit on it. He said the stock

(Testimony of Frank Veloz)

would go on the Exchange around 6 cents. I do not recall ever meeting Barclay, president of the Salt Lake Exchange. Collins and Murphy had \$1,200 when they were in the lobby of the Ambassador Hotel, and I drew a check for \$1,000 and went into the branch bank in the Ambassador and the bank gave them a check for \$2,200. Only once did Collins participate in any of the conversations I had with Murphy, and that was in the lobby of the hotel. Collins merely corroborated Murphy's statements.

Mr. Cannon: I will move to strike that out.

The Court: Oh, let it stand.

Mr. Cannon: Exception. (Tr. 961)

(Witness continuing)

The 21 certificates for 1,000 shares each which you show me represent 21,000 shares of stock that I obtained. I do not have the remaining certificates because Murphy told me that the Plymouth Oil Company was going to pay back some of the stock, and I went down to the Bank of America and deposited those stock certificates, and they sent me a check for \$141 and the balance of my stock.

(The documents heretofore marked Plaintiff's Exhibit 60, the 21 stock certificates, were received in evidence.)

Cross-Examination

By Mr. Cannon:

From time to time prior to these transactions in Plymouth Oil Company I had had experience in stock transactions. [154] Before becoming a professional dancer I worked in Wall Street in New York as a runner, or a messenger delivering stock. Prior to the conversation

(Testimony of Frank Veloz)

that I had with Murphy and Collins in the lobby of the Ambassador Hotel, I had already made arrangements with Murphy to buy this stock or to lend him the \$1,000, even before Collins ever came there. The representations that were made by Murphy concerning the listing of the stock, the drilling of the wells, and the production of the wells, were all told to me before I ever met Collins; and I agreed to let Murphy have this \$1,000 upon those representations, because of my friendship for Murphy. So when Collins came up and discussed the matter, it was only a matter of getting a cashier's check for \$2200. Murphy told me he was interested with Collins in this deal and in the Collins contract. (Tr. 963) Murphy and Collins spoke about the listing of the stock, and the production of the wells, when they were together in the lobby, and they were both very enthusiastic about it. Something was said about the well being on production and producing 200 or 300 barrels a day, and that they were going to drill another well. I was relying on my friendship with Murphy when I made this advance, I knew Collins only quite casually.

Cross-Examination

By Mr. Blue:

The 21,000 shares of stock that I have produced here do not stand in my name, but I believe the 4,000 shares that I turned in and upon which I had the return of \$141 and some cents did stand in my name, but I could not guarantee that, nor anything as to what was said four or five years ago. (Tr. 966)

(Witness excused.)

(At this point Mr. Manster read the following exhibits:) [155]

PLYMOUTH OIL COMPANY

TUcker 8494
911 Foreman Building
Los Angeles, California

December 14, 1938

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

My Dear J. H.:

I wired you this morning about the well and while the tanks have not been strapped and are therefore not positively accurate, we know what the well is doing, or in other words, that it is doing as much as we expected and is improving.

I hope that you will be able to come down either the end of this week or the first of next, as Mr. Gordon will be at home Saturday morning and we will have to close our new deal. I was thinking how very nice it would be if you could bring Billy Weeks with you.

I have several new ideas as to the manner in which we should drill the next well, none of which I would feel capable of explaining by letter. So I will wait until you come to see us.

Yours very respectfully,

E. Byron Siens.

E. Byron Siens.

P. S. When you do come down, would you please bring me some stationary of the Union Associated Mines Company. Thank you.

[Endorsed]: Securities and Exchange Commission.
Docket No. D515. Commission's Exhibit No. 97. In
the Matter of Union Assd. Mines Co. Date 11-22-40.
Witness Davis. Electreporter, Inc., Official Reporters.
By Morris.

POSTAL TELEGRAPH
The International System

* * * * *

1938 DEC 14 PM 3 33

F 116 9—FN LOSANGELES CALIF 14 223P
J H MORGAN—

UTAH OIL BLDG SALT LAKE CITY UTAH—
WELL MADE 216 BARRELS YESTERDAY AND
IS IMPROVING WRITING—

E BYRON SIENS.

POSTAL TELEGRAPH
The International System

* * * * *

1938 DEC 15 PM 1 59

F 98 18 DL—FN LOSANGELES CALIF 15 125OP
J H MORGAN—

UTAH OIL BLDG SALT LAKE CITY UTAH—
WELL MADE 226 BARRELS A GAIN OF TEN
BARRELS IN LAST 24 HOURS. SEEMS, TO BE
STILL IMPROVING—

E BYRON SIENS.

Mr. Manster: I now read from Government's Exhibit 41 in evidence, a carbon copy of a report filed with the Division of Oil and Gas "Log of Oil or Gas Well":

"Well No. 1—"

I will read the whole thing:

"Operator, Plymouth Oil Company; Field, Torrance;

Well No. 1; Sec. 23; T. 4-S; R. 14W; S. B. B. & M. Location, 202 feet S. and 532 feet W. from c/1 of 236th Street and Eshelman Avenue; Date, September 26, 1939."

Mr. Cannon: September 26?

Mr. Manster: September 26, 1939:

"Commenced drilling, November 9, 1938; completed drilling, November 30, 1938; total depth, 5125 feet; plugged depth, 5125 feet; commenced producing, December 14, 1938; initial production, 124."

That is clean oil, barrels per day:

"Gravity clean oil, 27; per cent water including emulsion, 5; gas mcf. per day, 52."

Mr. Blue: Million cubic feet.

Mr. Manster: Oh, million cubic feet:

"Production after 30 days, 92 barrels of oil; gravity clean oil, 27; per cent water including emulsion, 5; gas, million cubic feet, 47." (Tr. 968)

Telephone No. 7714

P. O. Box 2040

HUGHES PETROLEUM COMPANY, INC.

Alexander Building

Abilene, Texas

Jan. 2, 1939.

Judge J. S. Morgan,
Utah Oil Building,
Salk Lake City, Utah.

Dear Judge:

I hurriedly read the lease covering the 40 acres at Devils Den, but I did not find a clause in the lease wherein the leasee agrees to pay all of the taxes including the landowners taxes on the 40 acres.

I asked Mr. Seins to insert the clause or correct the tax clause as it was written. I gave him the names and addresses on all the parties and he will get it signed.

I hope that everything goes as you anticipated and that you will be successful in getting the \$15,000.00 together in order to go ahead with the well on lot #41. You should get a good well on that lot, and while the property will naturally decrease, it should produce for a long, long time. In fact, it is one of the best locations in the Torrance, Lomita field.

I wish that you would drop me a line occasionally about the Union Mines Associated Stock.

Wishing you the complements of the season and a Very Prosperous New Year, I remain

Yours sincerely,

Fred V. Gordon

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibit No. 47. In the Matter of Union Assd. Date 11-7-40. Witness Gordon. Electreporter, Inc., Official Reporters, By Middleton.

POSTAL TELEGRAPH
The International System

* * * * *

1939 FEB 28 PM 1 43

F 81 34 SER—FN LOSANGELES CALIF 28 1152A
J H MORGAN—

UTAH OIL BLDG SALT LAKE CITY UTAH—
WELL NUMBER TWO FLOWING BY HEADS.
TURNED INTO TANKS YESTERDAY AFTER-
NOON. ACTUAL PRODUCTION MIDNIGHT TO
EIGHT AM. TODAY EIGHTY FIVE BARRELS
WHICH IS AT THE RATE OF TWO HUNDRED
FIFTY FIVE BARRELS PER DAY—

PLYMOUTH OIL CO.

January 9, 1939

Mr. E. Byron Siens
911 Foreman Building
Los Angeles, California

Dear Mr. Siens:

No doubt you have received the letters as changed. I hope that they are satisfactory and that you can use them to the best advantage.

As I wired you the papers are completed to make application for listing, and I feel more certain now that the hundred dollars for listing should be covered by a check from the Union Associated, and not a draft drawn on Plymouth Oil or yourself. I think we should keep the Union Associated and Plymouth divorced from each other as much as possible, and in that connection I hope that you are coming to Salt Lake in the near future, that I might have an opportunity to discuss with you the matters that have developed in making this application for listing.

The auditor who has had charge of preparing the application is quite familiar with the rulings and regulations of the S E C, and has made some pertinent suggestions, not only for Union Associated to follow, but I think, suggestions that would be extremely advantageous for the Plymouth Oil and its distribution of the 635,000 shares received on deal No. 1, and the 635,000 shares of stock it will receive in deal No. 2. So please advise me of the time you think you might be in Salt Lake. I am sure it would be better to discuss the matter with you than

with any one else, and it is practically impossible to discuss these matters by mail.

You must have been using too much money in paying off bills, or "taking some blond to dinner." Your check came back, and it was a little embarrassing to me, for I had cashed it with Mr. Val Snow's, one of the brokers who has purchased more stock than any one else. It just happened that he cashed a check for me in place of my deposit in the bank. It would really strengthen my position with Snow, if you would airmail a certified check.

The letters to the stockholders are in the mail, and naturally we expect some strength in the market upon receipt of the letters, but again I would suggest that if possible, a buying order for a few thousand be placed at Los Angeles, if you can get Collins to do so.

Hoping that you are satisfied with the progress at well No. 2, I remain,

Sincerely yours,

JHM-mf

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 191. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

January 10, 1939

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

My dear Morgan:

Very sorry about the \$100.00 check incident; this occurred because all during the time Fred was here we were unable to write any company checks. By switching the checks around and taking up a number of small company obligations I got mixed up in my arithmetic. Guy is sending you under separate cover a letter and the contracts for the well and a \$150.00 check for your listing.

I am working very hard trying to get the forty acre lease all in order and will forward that on to you tomorrow, I hope!

The boys here are doing very well on the stock situation, but Mr. Adkisson, who has gone back to work for Marache & Co., has been injuring our market, but we shall have that all cleared up very shortly.

Very respectfully,

E. Byron Siens

E. Byron Siens

EBS*AES

Enc. \$100.00 Cashier Check

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 101. In the Matter of Union Assd. Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

January 3, 1939

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

My Dear J. H.:

We are anxious to have a quotation in the papers here daily of what the Union Associated Mines stock situation was in Salt Lake and I want you to go see Mr. Barclay and ask him to please give range and sales of Union Associated Mines in press release daily.

This will help us down here to a great extent that is people here can see that there is action and if there action it will stimulate buying.

We are anxious to have a copy of your letter to the stock holders for two reasons, due to getting the stock transferred to the new owners and the other is to know who our people are.

We are held up today waiting for Mr. Lacy as he was delayed in Arizona yesterday and did not get back to his office yet today, but we will get there without delay as Fred is not here to stall us.

You can see now how Mr. Barkley can help up as these newspapers will not give any stock quotations from brokers and will only take the same from the Presidents of Exchanges so you can see that Mr. Barkley can be of tremendous aid to us.

I am very glad to report that we did get one tank of oil shipped before New Years Day and we are shipping another tank today. I am also glad to report that our oil is 28 gravity instead of 25. We don't get any more for this but it gives a larger margin of safety.

Very Sincerely yours,

E. Byron Siens

E. Byron Siens

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 98. In the Matter of Union Assd. Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

January 4, 1939

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

My dear J. H.:

Just received your letter with the 102 stock certificates which are all in order and for which I thank you.

Everything here is running fine and we are going to have a market very quickly as I see it. *On* thing, though happened that I don't like and that was Hogle and Company have always been very friendly and called up two or three times a day while the well was drilling and two

of the boys in their office bought stock personally, but something or other happened to upset the situation over there.

Today a client of ours ordered 5000 shares to be purchased in Salt Lake through Hogle and Company and they refused to execute the order. I immediately called up Whittaker of their office to get the reason and he was at home sick so I did not talk to any other person at the office, but would like you to have Barclay talk to Hogle and find out what the matter is. You can feel free to ask the aid of Barclay at any time as I am going to see him later as explained to you, however, don't use my name with him.

We are waiting for the letter to the stock holders and will be able to get all this stock transferred to the right owners in time for the dividend. Also you will be needing to know about these stock holders for the annual meeting. I am still trying to find a suitable president for the Company, but we could do a lot worse than Billy Weeks.

If I don't find a big oil man, I think we will make him the President. In some ways I would like to have the president here as it sounds better to the Salt Lake people to have a big man in California doing things for them, whereas they don't think Billy Weeks can do much. I would like to be their President myself, but it is much better for me to be in the background and to have a more prominent man as President, but I don't know just how to get him.

Of course, Mr. Bray is all right in many ways, but he thinks I should pay all his bills for holding such an important position. It is tough enough to drill wells without money, but it is tougher to have to pay the President

too. His rent is \$70.00 per month, whereas my rent is only \$55.00 but of course he is a big oil man and that makes some difference.

Well, before the end of this year we will have lots of fellows who will be glad to be our President because we will have a dividend record then. These two wells will make us a sure shot, because if any thing happens to either of the wells, the dividends still go on. I would rather have three, one hundred barrel wells, than one, five hundred barrel well; because the income can never completely stop.

Now here is something I want you to do for me. I want you to go and see Mr. Barclay and tell him that when Mr. James H. Collins orders him to sell any number of shares up to 50,000 to proceed with the sale and that you guarrantee delivery. Don't usse my name, but I am guarranteeing this delivery through you. Barclay does not know Collins, but he is going to talk to Barclay tonight and introduce himself over the phone.

Sincerely yours,

E. Byron Siens.

E. Byron Siens.

EBS*AES

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibits Nos. 99, 99A. In the Matter of Union Assd. Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

PLYMOUTH OIL COMPANY

TUcker 8494

911 Foreman Building

Los Angeles, California

January 12, 1939

Mr. J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah

My dear J. H.:

I had Mr. Milliner mail you the lease on the forty acres and he did not attach a copy of his lease because his lease, as you know, is executed by Fred V. Gordon and his wife. I did not think it wise to send in a copy of same.

When Mr. Milliner's lease is recorded in Kern County, I will let you know and you can forward your lease down have it recorded.

With reference to the paper you wish signed by the Plymouth Oil Company I have executed another document showing how you are to pay the 635,000 shares of stock to the Plymouth Oil Company.

I do not suggest that you issue any of these shares at the moment, of course Mr. Millner will need, very soon, his shares but he will notify you at what time he wants them.

Very Respectfully,

E. Byron Siens

EBS*AES

I was in a hurry to get the papers up to you & Davis was not here so only Fischgrund signed with the seal if you want Guy to sign send it back.

I note Fischgrund signed for Davis.

E. B. S.

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 102. In the Matter of Union Assd. Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

January 17, 1939

Mr. E. Byron Siens
911 Foreman Building
Los Angeles, California

Dear Mr. Siens:

The Board of Governors passed the Union Associated for listing today, so that job is all over very nicely. In view of your letter, it looks like we can go on the San Francisco Exchange.

Please tell the boys to work exceptionally careful so that no question can be raised about "wash sales". There seems to be some question in the minds of the Listing Committee about Hogle's report on "wash sales". With this stock listed on both Exchanges, we will have a wonderful opportunity to make a fine Company; so let's not take any chances of having a stop-order come through.

I will write you more in detail tomorrow.

Very truly yours,

J. H. Morgan

JHM-mf

[Endorsed]: Securities and Exchange Commission. Docket No. L515. Commission's Exhibit No. 195. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

January 17, 1939

Mr. Fred V. Gordon
612 Subway Terminal Bldg.
Los Angeles, California

Dear Mr. Gordon:

Thinking you were in Texas, I mailed the annual tax statement for the Overland Petroleum Company to you there. It may be forwarded to you, but, in the event that it is not, please advise me if you desire to keep the Overland Petroleum Company a going concern. In the event that you do, please mail me \$20.00, and I will secure a new tax form and pay the annual tax fee.

In my Texas letter, I also advised you that it would be impossible to complete my deal on Lot 41. It really looked an excellent one to me, and because it looked so good, I had made three trips to Los Angeles and spent considerable money toward closing the deal. I could have gotten \$2,000 or \$3,000, but I did not want to go in the deal that way, and I am sure that neither you nor Mr. Lacey would appreciate having the deal stalled along as the Logan Petroleum deal was. I hope that you presented the matter to Mr. Lacey as you and I went over the deal in your office.

We expect the approval of the Listing Committee on the Union Associated today. No doubt Mr. Siens has advised you that the San Francisco Exchange has invited us to list on their Exchange. They will do this for a fee of \$100, instead of the regular \$300.

The minute a little buying support comes from Los Angeles, I am sure that considerable stock will be purchased here. This support should come at the time the stock is listed if it is to do the most good.

Trusting you are feeling well, and with kind personal regards, I remain,

Very truly yours,

J. H. Morgan

JHM-mf

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibit No. 48. In the Matter of Union Assd. Date 11-7-40. Witness Gordon. Electreporter, Inc., Official Reporters. By Middleton.

January 18, 1939

Mr. E. Byron Siens
911 Foreman Building
Los Angeles, California

Dear Mr. Siens:

As I was explaining to you on the phone, the Listing Committee approved the stock for listing and it was sent to the Governing Board yesterday. The Governing Board also approved the stock for listing. I am mailing the form 10 K to the S. E. C. today; this was done pursuant to our understanding with the Salt Lake Exchange that the stock would be listed before sending our report to the S. E. C. In other words, they desire that the stock be listed on the local Exchange before the S. E. C. starts stalling for time. If we had made our report to the S. E. C. first, we might have been answering questions for six months before we could have listed.

Mr. George J. Flach of San Francisco advised me that he purchased 20,000 shares of Union Associated stock at 2½ cents with the understanding that the stock was go-

ing to be listed on the San Francisco Exchange. Mr. Carter, secretary of the Exchange, had advised Mr. Flach of our entention to list the stock. Mr. Flach is desirous of making some connection to handle the stock in San Francisco. I suggest that you contact him. Any one who would purchase 20,000 shares on the basis he did looks like a *dam* good prospect. His address is 166 Montgomery Street, and his telephone is Douglas 3173.

You have not yet answered me on the Mrs. Willis E. Hutchason stock.

Be sure and let me have some report on the present condition of well No. 1 and what you are doing on well No. 2.

I just talked with Mr. Barclay and he confirmed my statement that it is not necessary to have a bank act as transfer agent in order to be listed. However, I think that we should do so as soon as we feel that we can afford to pay approximately 67 cents per thousand shares for transfers. I thought we had better wait until the second well is paid for because the cost of transferring the new 635,000 shares would be considerable money.

With kindest regards, I remain,

Sincerely yours,

JHM-mf

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 196. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

February 14, 1939

Mr. Guy B. Davis
Plymouth Oil Company
911 Foreman Building
Los Angeles, California

Dear Mr. Davis:

I received your letter with the instructions to make out the 40,000 shares Mr. Seins left with me. However, I received further instructions from Mr. Seins to delay making up the certificates, until further instruction from him. No doubt he has advised you of his present plans, but in the event that he has not, this paragraph will be an explanation of my delay in forwarding the stock to you.

Will you please advise me, airmail, the amount shipped from well No. 1 to the Standard Oil during the month of February, to date.

We would appreciate an airmail letter, advising us of the present status of well No. 2, and particularly in regard to the bottom sand below 5124 feet.

The stock situation is looking much better here, and I am sure that if the leak could be stopped through Pierce and Company, the market price would be at least 5 cents here in a very short time.

With kindest personal regards to all, I remain,

Very truly yours,

J. H. Morgan

JHM-mf

[Endorsed]: Securities and Exchange Commission.
Docket No. D-515. Commission's Exhibit No. 56. In
the Matter of Union Associated Mines. Date 11/15/40.
Witness Electreporter, Inc., Official Reporters.
By Oyler.

SIDNEY FISCHGRUND

Attorney at Law

707 South Hill Street

Los Angeles

TUcker 6031

May 10, 1939.

Mr. J. H. Morgan

Attorney at Law

526 Utah Oil Building

Salt Lake City, Utah

Dear Mr. Morgan:

This is to acknowledge receipt of your letter dated May 8, 1939, advising me that the stockholders meeting of the Union Associated Mines Company was held and a resolution adopted making the stock non-assessable.

The form A-1, which was received by me some time ago was promptly delivered to Mr. Guy B. Davis, with the request that he supply the information and data that is to be furnished by the Plymouth Oil Company. I spoke to him again today about this matter and showed him your letter, and at present I am patiently waiting until he furnishes me with this information in order that I may promptly forward it to you. In the meantime, I am making an effort to work out a deal whereby the Union Associated Mines Company would acquire a lease on property in Montebello. In view of developments in this field, I believe a lease in this area would prove to be very valuable to the company.

As soon as the form A-1 is completed and after I obtain the information regarding this Montebello field, I may take a trip to Salt Lake City in order to discuss these matters with you personally.

Very truly yours,

Sidney Fischgrund
SIDNEY FISCHGRUND

SF/b

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibit No. 110. In the Matter of Union Assd. Mines Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

SIDNEY FISCHGRUND
Attorney at Law
707 South Hill Street
Los Angeles
TUcker 6031

May 18, 1939.

Mr. J. H. Morgan
Attorney at Law
Utah Oil Building
Salt Lake City, Utah

Dear Mr. Morgan:

This is to acknowledge your letter dated May 15th, which I have forwarded to Mr. Davis, with a request that he please furnish you with the information you desire. It will be necessary for him to supply this information. He has been working on the books and has not

completed his audit so as to be able to give me the necessary data to be incorporated in the Form A-1.

I have been in touch with Mr. Davis and understand that an attempt has been made to obtain property in the Montebello field for the Union Associated Mines Company.

I have been kept very busy which accounts for the fact that I haven't had much time to go into these matters with Mr. Davis and Mr. Schirm.

Kindest personal regards.

Very truly yours,

Sidney Fischgrund

SIDNEY FISCHGRUND

SF/b

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 111. In the Matter of Union Assd. Mine Co. Date 11-22-40. Witness Davis. Electreporter, Inc., Official Reporters. By Morris.

Tulsa, Oklahoma.

May 15, 1939

Mr. J. H. Morgan,
526 Utah Oil Building,
Salt Lake City, Utah.

Dear Judge:—

I thank you for your letter of May 8th which was forwarded to me at this point.

I note the copy of the letter that Mr. Crapo wrote to Mr. Christian Vrang who is located at the Swift

Hotel, Knoxville, Iowa. I talked to Mr. Vrang about the alkali creek structure and he could not remember very much about it. He looked through his papers and was unable to find any report that he had made regarding the property but told me to look through his things at Abilene and I might be able to find it there. Mr. Crapo's letter will probably help him remember something about the structure.

I am not so sure now of being able to interest Mr. Phelan in drilling the alkali structure as he has invested such a large amount of money in a water bleeder that he desires first to recover some of that. I have, however, not given up and it may be that he will receive payment of several hundred thousand dollars on a government contract he has been working on sometime the latter part of this month, in which event I am sure that he will come in providing Vrang's report is good. Mr. Phelan is meeting me here Tuesday or Wednesday of this week and will accompany me to Abilene to look over the work we have been doing there. In event he does receive his money and come in we will organize a new company to develop several pieces of property at one time which, of course, would include your alkali dome. I will know within the next 10 days whether or not the deal goes over and if there is any question about it I will take the matter up with other parties.

I note that you held a stockholder's meeting of the Union and passed a resolution making the stock non-assessable. I wish you would kindly mail me a copy of the prospectus when completed. I have not heard from the boys in Los Angeles in reference to the engineers or geologists report on No. 1 and No. 2 but am quite sure they are looking after it. I hope this matter gets in shape

so there will not be any further delay in the marketing of that stock and making a success out of the company.

Mr. Vrang and two lease men are engaged at the moment in leasing up several hundred thousand acres of land in the western part of Iowa which Vrang likes the looks of very much and, while it is rather difficult to trace out the geology, he is making considerable headway.

Thank you for enclosing the clipping about J. C. Anderson moving in a rig at Dry Piney. I was talking to the Texas Company and they told me about drilling at around 7300 feet with hopes of getting a good oil producer. They have had a great deal of gas heretofore.

With best wishes, I am,

Yours sincerely,

Fred V. Gordon

FVG'c

[Endorsed]: Securities and Exchange Commission. Docket D515. Commission's Exhibits Nos. 211, 221a. In the Matter of Union Ass'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

(Mr. Manster also at this point read from Government's Exhibit No. 41, the report filed with the Division of Oil and Gas, as follows:)

Operator: Plymouth Oil Company. Field: Torrance. Well No. 2. Sec. 23. T. 48. R. 14W; dated June 20, 1939. Commenced drilling Jan. 28th, 1939. Completed drilling: February 23rd, 1939; Total depth: 5156; Plugged depth: 5156; Drilling tools: Rotary; Junk: Well completed; Commenced producing Feb. 28th, 1939; Initial

production: 156 barrels Clean Oil per day; Gravity Clean Oil: 26; Per Cent Water including emulsion: 40; Production after 30 days: 118 barrels Clean Oil per day; Gravity Clean Oil: 26; Per Cent Water including emulsion: 40; Gas Mcf. per day: 77. (Tr. 971-972)

C. H. LAUDER,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is C. H. Lauder, and I am a physician and surgeon, and I live in Arcadia, and I am acquainted with James H. Collins, and I am a purchaser of stock of Union Associated Mines. I purchased this the first part of February, 1939, it being 10,000 shares and I paid \$400.00 for it. Collins came to my office in company with Mr. Tessier with whom I was acquainted, and with whom I had had numerous stock dealings prior to that time. I had never met Collins before and Tessier introduced him to me. Collins stated he had some [157] good oil stock of the Union Associated Mines Company that he could sell for \$400.00 for 10,000 shares. He said it was a very good investment and that I would double my money in the next thirty days; that they were drilling for oil and that the well would come in within a short time and that the stock would go up in price. I relied upon the statements made by Collins because Tessier had been very honest with me before and I believed Collins because Tessier sort of vouched for him. I still have my stock, but I do not have it with me. My attorney has it. (Tr. 993)

(Testimony of C. H. Lauder)

Cross-Examination

By Mr. Blue:

The kind of stock that I had purchased from Mr. Tessier I do not suppose was very good stock. During my career I have bought and purchased stock on many occasions. I had not discussed Union Associated Mines with Tessier before I met Collins. Collins mentioned it to me before Tessier said anything about it. I do not recall that Collins at any time told me that the Union Associated Mines had any interest in an oil well that was producing at Torrance, but he told me at that time that a well was being drilled by Union Associated Mines Company. That conversation was five years ago, and I do not recall a lot of things. I do not remember that he told me that there was a producing well in which Union Associated had a 50 per cent interest. Collins did not state anything, as I recall, about a 50 per cent interest in any oil well. I bought my stock merely on the theory that I would turn over my money for a higher price than what I was paying for the stock, in a short time. I did not buy it as an investment, but bought it as a speculation. I had faith in Mr. Tessier. Reed Drug Company stock, and Liberty Loan Company stock, that I bought through Mr. Tessier, have been sold by me for less [158] than I paid for them. I discussed this matter with Mr. Evans before I testified here, and I gave a statement to the Securities Exchange Commission in reference to this particular transaction, several months ago, but Evans did not refresh my memory as to what happened five years ago. A discussion occurring five years ago is very hard to remember verbatim. (Tr. 997) Something was said about listing this stock on the Salt Lake Stock Exchange.

(Testimony of C. H. Lauder)

My transaction was on February 4. I do not remember that they told me that the application had been approved by the Board of Governors on the Salt Lake Stock Exchange. I do not know when I received that information. I sued Mr. Collins. I am not unfriendly with him, but I do not like to have anybody tell me something that is not so. I do not know, as a matter of fact, whether everything he told me was so, but he certainly has not been very friendly with me.

Cross-Examination

By Mr. Cannon:

As a matter of fact, Mr. Tessier has been a confident of mine for quite a long time, prior to the time that I bought this stock, and was acting as my agent in a number of transactions; and I had every reason to believe in Collins because Tessier vouched for him, and I took Tessier's statement as to Mr. Collins' integrity and I did not know Mr. Collins any more than I know you. I relied a great deal on what Mr. Tessier told me because he had been very honest with me. Only on one occasion have I ever found him to be otherwise; and that occasion was when he vouched for Collins.

Q. What did Mr. Collins tell you that wasn't true?

A. I know he got my \$400.

Q. What did Mr. Collins tell you that wasn't true?

A. I don't know. (Tr. 1000)

(Witness excused.) [159]

MILTON A. CRYDEMAN,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Milton A. Crydeman and I am manager of the Foreman Building, in Los Angeles, and have been so for nine years. In the latter part of 1938, Sidney Fischgrund was a tenant of the building and had a suite at 905. The Plymouth Oil Company had a suite in that building between 1938 and 1939, from September 1 to March 31. The Plymouth Oil took over a lease formerly made by the Commercial Oil Company. In my capacity as manager of the building, I conducted my business for the Plymouth Oil Company with Mr. Siens. The Plymouth Company occupied rooms 910 and 911. I do not recall a Mr. Millener, but the name sounds familiar. Our records show that Millener was in suite 910 and 911.

Cross-Examination

By Mr. Blue:

I have known Sidney Fischgrund probably 10 years and he is still a tenant in my building, and I know his reputation in the community for truth, honesty and integrity. It has always been first class in my relations with him.

(Witness excused.)

At this time Mr. Manster read certain Exhibits, as follows:

On the stationery of J. A. Barclay & Company, "Stock Brokers and Dealers in Securities, Member Salt Lake Stock Exchange." the 6th of January, 1939, from J. A. Barclay to James H. [160] Collins, contained in Government's Exhibit No. 26 in evidence:

"Dear Mr. Collins:

"Enclose statement of the sale of 1,000 shares UNION ASSOCIATED at $2\frac{1}{2}\phi$ per share.

"Yesterday afternoon, the stock sold at 2ϕ and today at $2\frac{1}{4}$ and $2\frac{1}{2}\phi$, these sales being by one of the wire houses.

"The report should be in the hands of the stockholders by Monday, and we look for a stiffening of the market and tomorrow we expect the market to be $2\frac{1}{4}$ @ $2\frac{3}{4}\phi$; buyers can, of course, alter this.

"We like the report and believe that when stockholders become fully advised of the company's conditions and a little publicity is used, there should be an upward trend in the market.

"Looking forward to the pleasure of seeing you next week, we are

"Very truly yours,

"J. A. BARCLAY & COMPANY
"By J. A. Barclay (s)"

On the stationery of J. A. Barclay & Company, dated the 14th of January, 1939, from J. A. Barclay to J. H. Collins:

“Dear Mr. Collins:

“As per your verbal instructions of yerterday’s date, we today delivered to Mr. J. H. Morgan, Utah Oil Bldg., this city, three thousand shares UNION ASSOCIATED MINES COMPANY stock—certificates Nos. 3763, 3766 and 3767 each for 1,000 shares.

“This now leaves twenty-one thousand shares Union Associated Mines Company stock which we are holding to your order. [161]

“Very truly yours,

“J. A. BARCLAY & COMPANY
“By J. A. Barclay” (s)

On the stationery of J. A. Barclay & Company, the 18th of January, 1939, to Mr. J. H. Collins:

“Dear Mr. Collins:

“Acknowledging your wire of today’s date as follows:

“‘If possible include sales of Union in list of sales released daily to Press suggested you not sell any stock under two and three quarters many thanks for your kind wire answer by Western Union Collect’

“There was no active market in UNION ASSOCIATED today and one sale @ $2\frac{1}{2}\phi$ per share, so we are quoting the market $2\frac{1}{4}$ @ $2\frac{3}{4}\phi$, and in ac-

cordance with your suggestions, will not sell any of your stock under $2\frac{3}{4}\text{¢}$ per share.

“As regards having the sales of Union Associated in the Salt Lake papers at the present time, it is just an impossibility. We have a list on the Exchange, as you will see from the enclosed quotation sheet, of unlisted stocks, but they are unlisted under the sanction of the SEC and the papers do not carry a story even of the Governing Board approving of their listing until they see what the SEC does.

“As usual, the offers at $2\frac{1}{2}\text{¢}$ came out of Los Angeles. I just wished they would dry up down there and give the market a chance.

“Please advise me when they start drilling on Well #2.

“It is a good thing for me to have your office address, as then I can reach you by wire or telephone [162] more quickly.

“Very truly yours,

“J. A. BARCLAY & COMPANY

“By J. A. Barclay” (s)

On the stationery of J. A. Barclay & Company, January 24, 1939, from J. A. Barclay to James H. Collins:

“Dear Mr. Collins:

“As per your verbal instructions of yesterday's date, we today delivered to Mr. J. H. Morgan, Utah Oil Bldg., this city, TWENTY THOUSAND (20,000) shares UNION ASSOCIATED MINES COMPANY, stock certificates Nos. 3901, and 3770 to 3788, inc., for 1,000 shares each.

“We also gave Mr. J. H. Morgan our check in the amount of \$45.00 which is the amount we were holding to the credit of your account.

“This now completes delivery of all stock we were holding to the credit of your account.

“This now completes delivery of all stock we were holding to your order, and squares all transactions to date.

“Very truly yours,

“J. A. BARCLAY & COMPANY

“By J. A. Barclay” (s)

On the stationery of J. A. Barclay & Company, dated January 26, 1939, to Mr. James H. Collins:

“Dear Mr. Collins:

“UNION ASSOCIATED closed at .02 @ $2\frac{1}{4}\phi$ today, the only sale being 1,00 shs. @ $2\frac{1}{4}\phi$.

“Don’t know whether it will interest you, but [163] we can sell 5,000 shares @ .02. If you wish to do this, wire before noon tomorrow.

“These markets are very discouraging, as they are creating a feeling among investors that they do not want to do anything. However, they will change and meantime if your people will lay a solid foundation in the case of the market for Union Associated they will do much better than trying to push things over quickly.

“With kindest regards, and will be glad to hear from you at anytime,

“Sincerely and cordially,

“J. A. Barclay” (s)

On the same stationery, January 28, 1939, to Mr. James H. Collins:

“Dear Mr. Collins:

“Confirming our telephone conversation of yesterday, and enclose herewith statement for the sale to us of 5,000 shares UNION ASSOCIATED @ .02.

“As we understand it, someone is going to deliver to us 10,000 shares Union Associated stock, and you are sending us a check for \$100.00 to pay for 5,000 shares, and hold that stock to your order.

“With best wishes,

“Very truly yours,

“J. A. BARCLAY & COMPANY

“By J. A. Barclay” (s)

On the same stationery, February 1, 1939, to Mr. James H. Collins:

“Dear Mr. Collins: [164]

“We finally arrived at the conclusion of the deal, and cannot understand the position of Pierce & Company as Ure, Pett & Morris instructed me that they had *wire* them to take the stock with Assessment No. 8 paid, delinquent May, 1935, and charge it to their account.

“We enclose statement for the sale of 5,000 shares as indicated in our telephone conversation, and sold

it to a broker who is quite interested in the company and whom I hope to have with me Saturday.

“Trusting that from here on you and I will have no more worries and troubles.

“Kindest regards!

“Cordially and sincerely,

“J. A. Barclay” (s)

On the same stationery, to Mr. James H. Collins:

“Dear Mr. Collins—”

Mr. Blue: What is the date?

Mr. Manster: February 9, 1939:

“Herewith stock certificates Nos. 4127 to 4131, inc. for 1,000 shares each, making 5,000 shares UNION ASSOCIATED MINES COMPANY issued in the name of Matthew McCarthy, and there is a balance due us of \$10.00 which we have charged to your account.

“We also enclose stock certificates Nos. 3975 to 3989, inc. for 1,000 shares each, making 15,000 shares UNION ASSOCIATED MINES COMPANY, these shares all coming from your stock which we were holding to your order a total of 10,000 shares.

“The market today—all trades @ $2\frac{1}{2}\text{¢}$ —closing $2\frac{1}{2}$ @ $2\frac{3}{4}\text{¢}$. [165]

“Kindly acknowledge receipt of above certificates.

“Very truly yours,

“J. A. BARCLAY & COMPANY

“By J. A. Barclay” (s)

On the same stationery, to Mr. James H. Collins:

“Dear Mr. Collins:—”

Mr. Blue: What is the date, please?

Mr. Manster: February 11, 1939:

“As per telephone conversation of today’s date, we herewith enclose stock certificates Nos. 4065 to 4069, inc., and 3998, 3999, 4001, 4002, and 4003, all for 1,000 shares each, making a total of 10,000 shares UNION ASSOCIATED MINES COMPANY.

“This is all the stock which we were holding to your order, and as regards your balance, you owe us \$11.04, \$10.00 being commission on the McCarthy stock, and \$1.04 being revenue stamps on the two lots of 5,000 shares sold. Kindly send us check to square.

“Very truly yours,

“J. A. BARCLAY & COMPANY

“By J. A. Barclay” (s)

On the same stationery, February 16, 1939. to Mr. James H. Collins:

“Dear Mr. Collins:

“We today had the check returned to us in the amount of \$375.00 which was dated February 6th, and which was returned having been protested.

“The cost of the protest was \$2.50 which we have charged to your account, making a total balance [166] owing us of \$13.54.

“Kindly send check for this amount as we do not like these balances hanging over.

“Union Associated was $2\frac{1}{4}$ @ $2\frac{1}{2}\phi$ today.

“Very truly yours,

“J. A. BARCLAY & COMPANY

“By J. A. Barclay” (s)

Government’s Exhibit No. 48, in evidence, a letter upon the stationery of Union Associated Mines Company, dated September 20, 1939, addressed to Mr. Erlene B. Bates, 921 South Spaulding Ave., Los Angeles, California:

“Dear Sir:

“You have been sent your check on Certificates No’s. 4040 to 4050. Of course, we can do nothing about your other seven certificates until they are in either your hands or ours.

“We have heard nothing from Mr. Metcalf here at our office. If you could give us the names on the certificates and the numbers, of course there might be some way to check the matter satisfactorily.

“Very truly yours,

“Margaret Florence (s)

“Transfer Agent.”

Government’s Exhibit No. 52, in evidence, confirmation upon the stationery of R. L. Colburn Company, Brokers, Members of San Francisco Mining Exchange, San Francisco, California, addressed to Frank L. Tucker:

“As agent we have this day purchased for your account

"5,000 Union Assoc., Price .02 $\frac{3}{4}$, Amount 137.50,
Commission 10.00, Amount 147.50. [167]

"Yours very truly,

"R. L. COLBURN COMPANY

"By R. Evans." (s)

Government's Exhibit 59, in evidence, a letter upon the letterhead of Plymouth Oil Company, dated February 6th, 1939, addressed to Mrs. Erlene Bates, 921 South Spaulding Drive, Los Angeles, California:

"Dear Madam:

"You will please find enclosed 17,000 shares of Union Associated Mines Company stock, which has been issued in your name.

"Very truly yours,

"PLYMOUTH OIL COMPANY

"By-Guy B. Davis." (s)

WILLIAM H. O'BRIEN,

a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is William H. O'Brien, and I am living in Los Angeles, and I am Associate Securities Investigator for the Securities and Exchange Commission (Tr. 1018) and have held that position seven years. Under instructions, I called at the office of the Plymouth Oil Company and made an inspection of certain records. I also went to the Subway Terminal Building and examined certain records furnished me by Guy Davis. I examined Govern-

(Testimony of William H. O'Brien)

ment's Exhibit No. 40, purporting to be a daily pumpers' report for Plymouth Wells Nos. 1 and 2, and a tank gauge formula. I made a transcript thereof, embracing two schedules which you now show me. Confining [168] my testimony to Well No. 1, and giving you first the total production for each month, starting with December, 1938, and continuing through December, 1939, on Well No. 1, as well as the highest daily production during each month, it shows on December, 1939, a total of 1751.07 barrels were produced. January, 1939, 2581.04. The highest days pumping 120.03. February, 1919.05 barrels. The highest days pumping 77.05; March 1064.05 barrels. The highest pumping 65.06; April 1158 barrels. The highest days pumping 107 barrels; May 1130 barrels. The highest days pumping 40 barrels. June 950 barrels. The highest days pumping 36 barrels; July 920 barrels. The highest days pumping 41 barrels; August 792 barrels. The highest days pumping 37 barrels; September 692 barrels. The highest days pumping 30 barrels; October 424 barrels. The highest days pumping 28 barrels; November 74 barrels. The highest days pumping 16 barrels; December 248 barrels. The highest days pumping 16 barrels. (Tr. 1023) And as to well No. 2, it appears that the first month shown me was of April, 1939, 2817 barrels. The highest pumping 118 barrels; May, 1939, 3133 barrels. The highest days pumping 108 barrels; June, 2630 barrels. The highest days pumping 102 barrels; July 2504.05. The highest days pumping 105 barrels; August 2248.05. The highest days pumping 77½ barrels; September, 2091 barrels. The highest days pumping 92 barrels; October, 860.05 barrels. The highest

(Testimony of William H. O'Brien)

days pumping 75½ barrels; November, 241 barrels. The highest days pumping 81 barrels; December, 396 barrels. The highest days pumping 20 barrels. (Tr. 1024)

Cross-Examination

By Mr. Blue:

Prior to being with the Securities & Exchange Commission, I was in the brokerage business, but did not sell [169] stock. I did accounting work and office management. I have been a witness for the prosecution on a few occasions. My records as to Well No. 2 start in April. The record before April was not there. March was missing. Whatever records I got I got voluntarily from the Plymouth Oil Company. There was no argument about it. I did not check the records against the records of the Standard Oil Company (Tr. 1027). I was not interested in the shares of stock that the Plymouth Company owned. I know nothing about the actual production of the well except what is shown on the records. I have added them only (Tr. 1033), and I have done some multiplying.

Q. By Mr. Blue: * * * I want to direct your attention to this particular report dated, as you will note, December 28, 1938, and to this one also dated December 28, 1938, and you will note following that that we have December 30, 1938. Now, will you kindly point out to me on your recap where you have included the report that I am now directing your attention to in this particular exhibit?

(Testimony of William H. O'Brien)

Mr. Cannon: The exhibit number is what, for the record?

Mr. Manster: 40.

* * * * *

Q. By Mr. Blue: That is a report headed, "Lease, Plymouth Oil Company, Well No. 1," dated December 28, 1938, "Tour 12 to 8," Barrel 6¼, Barrel 6¼, and Barrel 6.

Will you kindly show me where that is on your report?

A. The 28th, I have—

Q. As a matter of fact, you haven't got it there? Have you got that in your report?

A. No, there is only one 28th in here.

Q. Then that particular pumpers' report is not included [170] in your summary, is that correct?

A. No, because I took the first one I found.

Q. Did you ask anybody as to whether or not it might have been a mistake, and might have been 12/29?

A. No, I did not.

Q. You just excluded it entirely?

A. That is right. I thought it was a duplicate or a corrected one, although nothing was said about it.

Q. Then you knowingly excluded it?

A. Yes.

* * * * *

Q. You are an accountant, are you, and you say if you did not include it in there, that makes it something less?

* * * * *

A. I say, my summary is less by not including it.

(Testimony of William H. O'Brien)

Q. And if this had been in there your summary would have been greater? A. That is right. (Tr. 1035-1036)
(Witness continuing)

Cross-Examination

By Mr. Cannon:

This record shows that the first oil was produced or pumped from Well No. 1 on December 15, 1938.

Mr. Cannon: Now, at this time I want to read into the record a telegram or two before I go back to the witness from the exhibit. * * * December 12, 1938, a telegram to J. H. Morgan, Utah Oil Building, Salt Lake City, Utah, from E. Byron Siens; first, there is one at 5:12 a.m. on that date of December 12th:

“Well flowing by heads but still swabbing occasionally at midnight Sunday night. Cleaning up very fast. Unable to determine at this time exact production. Will wire you [171] later Monday.

“E. BYRON SIENS.”

The next one is a telegram, Postal Telegraph, dated December 12, 1938, 11:23 a.m., addressed from Mr. Siens to Mr. Morgan:

“Swab machine broke down at 7:00 a.m. but the well still flows by heads. Have not turned into tanks yet and it will perhaps be 24 hours before we know exact daily production. Personally I am pleased.

“E. BYRON SIENS.”

(Testimony of William H. O'Brien)

Another one, December 12, 1938, 1:05 p.m., addressed to Mr. Morgan from Mr. Siens:

"Have not swabbed since 7:00 o'clock but well is now flowing every 15 minutes, showing hourly improvement.

"E. BYRON SIENS."

December 12, 5:43 p.m., to Mr. Morgan from Mr. Siens:

"Well has been flowing steadily for over an hour.

"E. BYRON SIENS."

December 13, 1938:

"We installed a \$4,000 Lacy bulldog pumping unit this morning at 9:00 o'clock. Well still flowing by heads. Will give you tomorrow definite output." (Tr. 1037-1038-1039)

(Witness continuing)

Up to December 31, 1938, the pumpers' records embracing Government's Exhibit 3 show that Well No. 1 had produced 1751.7 barrels, which is 249 barrels less than 2,000. So, to this 1751.7 barrels there must be added 99.6 barrels, covering the oil produced on the 28th of December, and that [172] would make 1851.3 barrels, but that does not take into consideration anything that the well produced between the 12th of December and the 15th of December, because there were no reports for it (Tr. 1040). I could not say whether Mr. Morgan's letter of January 6, 1939, Government's Exhibit 3, to the effect

(Testimony of William H. O'Brien)

that as of December 31, 1939, 2,000 barrels had been produced, is correct or incorrect. (Witness excused).

Mr. Cannon: Without requiring the prosecution to produce the witness, we will stipulate that if a witness from the Clark Hotel in Los Angeles were called that he would testify from his records that on or about January 29, 1939, Mr. Morgan affixed his signature to the register of the Hotel Clark in Los Angeles.

We will also stipulate that that same witness, if he were called, would testify that on or about February 21, 1939, Mr. Morgan affixed his signature to the register of the Hotel Clark in Los Angeles. (Tr. 1043-1044)

* * * * *

The Court: Do you rest?

Mr. Manster: We rest subject to making a motion to dismiss several counts in this indictment which have not been established. (Tr. 1045)

* * * * *

Mr. Manster: All right. The Government moves the dismissal of Count Three of the indictment, which is predicated upon a mailing to the witness Ida M. Apperson.

The Government moves the dismissal of the Sixth Count of the indictment predicated upon a mailing to the witness Henry K. Elder.

The Government moves the dismissal of the Seventh Count predicated upon a mailing to Ila Mae Hutchason.

The Government moves the dismissal of the Eighth Count [172-A] predicated upon a mailing to R. W. Peet.

The Government rests. (Tr. 1045-1046) [172-B]

Mr. Blue: May it please the Court, at this time on behalf of all the defendants—and what I say will be supplemented also by Mr. Cannon—I wish to move for a directed verdict and for a dismissal of each and every defendant on the grounds that the evidence as adduced by the Government is not sufficient under the indictment to present any question to the jury. (Tr. 1049)

* * * * *

At the conclusion of Mr. Cannon's statements, by reason of the fact that I have covered generally the motions for all the defendants, without specifically referring to any, I would like another opportunity to address the bench for a few moments on behalf of the other defendants.

Mr. Cannon: If the Court please, at this time I want to make some special motions to strike, if I may have the Clerk's list of exhibits?

First, I want to move to strike on behalf of all defendants, to strike from the record Exhibit 41 in evidence, copies of a log of an oil or gas well, Division of Oil and Gas, on the ground that no proper or any foundation has been laid for the introduction in evidence of that document; on the further ground that on its face alone it shows to be incompetent, and on the further ground that it is a narrative of past events.

They are copies, not the originals. No witness was produced to identify them except the fact that they got them from Plymouth Oil Office. They are dated September 26, 1939, purporting to set up what occurred on December 14, 1938. (Tr. 1069)

They are not signed by any witnesses produced. One of them bears no signature, typewritten or otherwise, and

the other one, attached to the sheet, is dated June 20, 1939, [173] purporting to reflect what occurred on February 28, 1939. (Tr. 1070)

Do you want to rule on them separately, or shall I make them all at one time? May I pass this to the bench? It is hearsay as to all the defendants.

The Court: There is one that bears the signature of Mr. Lacy.

Mr. Cannon: But the signature has never been identified. The witness was never produced. No person was offered as a witness to testify as to the regularity of the keeping of the document or the circumstance under which it was prepared, or where the original was filed.

I insist on all of them, but the primary objection is that it purports to be a narrative of past events.

The Court: I will deny your motion.

Mr. Cannon: Exception. I move at this time to strike Exhibit No. 27, which is a check No. 191, dated January 7, 1939, given to John McEvoy for \$100, signed by Mathilda M. Klinger, and also Exhibit No. 28, a check of March 1, 1939, given to Mr. McEvoy for \$20, signed by Mathilda Klinger, and Exhibit 29, certain stock certificates of Union Associated Mines Company, being stock certificates delivered to Mathilda M. Klinger on the ground that each and all of those exhibits are hearsay as to these defendants, and to all of them, there being no connection shown with those checks, receipt of the money for the stock, or delivery of the stock by any of the defendants to that witness. (Tr. 1071)

The Court: Your motion will be denied.

Mr. Cannon: Exception. [174]

Mr. Cannon: I move to strike Exhibit No. 50 which is a check of Fred L. Hunter for \$147.50 to R. L. Colburn, it being hearsay as to all the defendants and incompetent, irrelevant, and immaterial, and no proper foundation laid for it.

I can relate the circumstances, if your Honor is not familiar with them.

The Court: I don't recall that. (Tr. 1072)

Mr. Cannon: That is the transaction where Mr. Tucker said he had the transaction with Colburn & Company, and that Murphy suggested to him that he place an order through some brokerage, and when he asked him if he had any preference and Tucker said that he had not, the order was placed with Colburn & Company. He made the check payable to Colburn. Murphy is not even an alleged co-conspirator. It would clearly be hearsay as to all these defendants.

The Court: Do you remember where that testimony was?

Mr. Cannon: I can't give you the page, but I can give you the day he testified on it. [175]

Mr. Manster: I have it right here, Judge. The specific testimony with respect to this check is at page 881.

The Court: I will read it.

Mr. Manster: However, the testimony is that it was at Murphy's suggestion that the order for 5,000 shares, for which this check was given, was placed by Murphy with Colburn, and I think Mr. Cannon stated correctly that Mr. Tucker had no preference for any dealer through whom this transaction should be effected, and he permitted Murphy to select the dealer, and of course, Murphy was connected in this case with Collins in this particular trans-

action, and with this investor witness through the defendant Collins.

Mr. Cannon: There is no evidence of that. It was not proven. (Tr. 1073)

The Court: There isn't any evidence of this portion of the stock delivered by Associated to Plymouth, was there, on the open market?

Mr. Manster: No, but the pertinent evidence is this. Page 876 of the transcript:

“A. Well, Mr. Murphy said there was some stock in Salt Lake that they wanted to pick up and he would rather pick it up through some brokerage firm, and suggested that I bid $2\frac{1}{2}$ or $2\frac{3}{4}$, and he asked me if I had any objection to what brokerage firm he put the order in through, and I told him I did not. So, when it was confirmed that—when the sale was confirmed, I gave him the check to deliver to the brokerage firm and he picked up the stock.”

The sale was effected at the suggestion of Murphy through the brokerage firm which Murphy selected. (Tr. 1074) [176]

The Court: Well, I will deny that motion temporarily, but I will look into it.

Mr. Cannon: Exception. May it be deemed that I have made the same motion to strike Exhibit 52 upon the same grounds, it being the R. L. Colburn purchase order.

The Court: That is a part of that same transaction?

Mr. Cannon: Yes.

The Court: The motion will be denied.

Mr. Cannon: Exception.

Mr. Cannon: I move to strike the testimony, all the testimony of the witnesses Klinger and Walker on the ground that there is, so far as defendants Collins and Morgan are concerned, and Mr. Fischgrund and Mr. Schirm on the ground that the testimony is altogether hearsay as to them, it not appearing they had any connection with the transaction at all and were not present at conversations (Tr. 1075) had or representations made at any of these conversations, and if that motion may be deemed to be made without referring to the book and the page of the transcript, because I don't have the transcript, and I can't do it.

The Court: That motion will be denied.

Mr. Cannon: Exception. I move to strike the testi- [177] mony, all the testimony of the witness Tucker on the ground that it is hearsay as to all of the defendants and no proper or any foundation was made for the introduction in evidence of that testimony, and it is immaterial so far as this case is concerned as it affects the defendants.

I call particular attention to the fact that Mr. Tucker testified specifically that he met Collins after he bought all his stock, and therefore it could have no probative value in the establishing of the scheme or the continuance thereof.

The Court: That motion will be denied.

Mr. Cannon: Exception. I will move on behalf of all defendants to strike the testimony of the witness Shomate on the ground that so far as all defendants are concerned, that it embraces the transaction, has to do with the transaction which is in no way mentioned in the indictment. There is no charge in this indictment to the effect that

we would assume to convey property to which there was no title, to any of the persons. (Tr. 1076)

I assume the only purpose of the testimony of Mr. Shomate was interrogation of the witness by the prosecution, indicating that he was directed toward establishing the lack of record titles in Gordon at the time he made the Millener lease, and that not having been charged against the defendants . . . in the indictment whatever, it becomes immaterial and irrelevant. It has no bearing on the issues in this case and is highly prejudicial.

I make that motion on behalf of all defendants for that reason, and I make it further on behalf of all de- [178] fendants except Gordon, on the ground that the transaction is entirely hearsay, and as to the rest of the defendants, it is also highly prejudicial.

In view of the fact that I don't want this Court or the Appellate Court to feel that I haven't called to the Court's attention the details of the transaction, if your Honor wants me to refresh your recollection as to the testimony, I will be glad to do that.

The Court: It was the testimony of the County Recorder, wasn't it?

Mr. Cannon: Yes, the County Recorder. He testified on the afternoon of July 13.

The Court: I will reserve my ruling on that. (Tr. 1077)

* * * * *

Mr. Cannon: * * *

I think the Court at this stage of the proceedings must go further than to determine whether or not there is even the slightest bit of evidence to go to the jury. I think

your Honor must come to the conclusion that there is substantial evidence before you should allow the case to go [179] to the jury, and if there is any hypothesis consistent with innocence which can be adopted in this case, your Honor at this stage of the proceedings, should direct a verdict.

I make the motion on behalf of all of the defendants, but I want particularly to call your attention to Morgan's and Collins' connection with the enterprise because those are the men in whose defense I am particularly interested. (Tr. 1079)

* * * * *

In this case I contend, as Mr. Blue has, that you ought not to require these defendants to go to a jury on a proposition where there is no substantial evidence to sustain the charge in the indictment. These men may have been guilty, I think they were not, but I say they may have been guilty of some other or different scheme to defraud than that alleged, but that would not justify your Honor to allow the jury to speculate on flimsy evidence of the type and character we have here. (Tr. 1084)

* * * * *

Mr. Blue: * * * I would at this time ask one more motion to strike, and that is the Exhibits that were offered and received in evidence through Mr. Shumate's testimony; that is a deed and a quit claim deed, a sheriff's deed and a quit claim deed.

The Court: I have reserved my ruling on that. (Tr. 1095)

* * * * *

Mr. Manster: * * * While on the subject of the Millener lease, both Mr. Cannon and Mr. Blue commented upon the irrelevance or immateriality of the fact that the defendant Gordon was not the record owner of the property which he purported to [180] convey to this Millener as a nominee, who subsequently conveyed it, within a week, to Union in exchange for this 235,000 share block of Union stock.

Well, with regard to the question of surprise, I cannot see that the defendants are prejudiced by the disclosure of this evidence inasmuch as these facts are peculiarly within the knowledge of Mr. Gordon.

The Court: That may apply in a civil case but I don't know about a criminal.

Mr. Manster: At least he is presumed to have knowledge of whether or not he is the record owner of property he—

The Court: I know.

Mr. Manster: —purports to convey.

The Court: But ordinarily you cannot go beyond the allegations of your indictment. That is what these gentlemen objected to.

Mr. Manster: Well, may I attempt to show—

The Court: The closest you came to that in your indictment was where you say that they acquired unproven land. You don't say anything about any fictitious title.

Mr. Manster: In connection with that allegation of the indictment, the effect upon the assets of the Union (Tr. 1116) Company is about the same if unproven or undeveloped land is conveyed in exchange for a large block of stock as if nothing was conveyed.

The Court: That may be true, but the question is whether you can go beyond the four corners of your pleading.

Mr. Manster: Well, I think it is extremely material on the question of scienter or intent on the part of Gordon. Intent, of course, is a vital factor to be established in every case, and I certainly believe that in a case of this type where the activities of these defendants have progressed [181] over a period of quite a few months that a purported conveyance in exchange for a consideration where there actually was no record ownership is material on that issue of intent. (Tr. 1117)

* * * * *

Mr. Blue: I say to the Court that in the exercise of your discretion, on the authorities that have been cited to you by Mr. Cannon and will be further cited to you by Mr. Cannon, that each and every one of these men should be acquitted by your direction, not by a jury. (Tr. 1146)

* * * * *

Mr. Cannon: So, I submit that the case ought not to go to the Jury. It is a case wherein the merits of things that have gone in here, a Jury can very well go awry on it and with all the matter the way it stands here now, there is no evidence on which this case could go to the Jury as to any one of the defendants.

* * * * *

The Court: * * * The record may show that the motion is submitted. (Tr. 1160) [182]

The Court: The motions submitted to the Court yesterday are denied. That includes the motion to strike the testimony by Mr. Shomate.

Mr. Cannon: May we have an exception to them? Also I understand, just so the record will be clear, that the motions were also directed to the dismissal of each and every count separately, and to the indictment as a whole?

The Court: Yes, that would be included. (Tr. 1163)

JAMES M. EVANS,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cannon:

My name is James M. Evans, and I am an attorney with the Securities and Exchange Commission, and have been so employed since August, 1938; and have been on this case since the late fall of 1940. I was transferred to Los Angeles as a senior attorney in January of 1941, and since that time I have more or less handled the case because I was more familiar with it than anyone in this office. The statement in Defendants' Exhibit G in evidence, being a statement made by Mr. Duvoisin, accountant and investigator, to Mr. Charles R. Burr, Assistant Chief Accountant Investigator, dated October 19, 1939, identified through Lewis J. Hampton, is familiar to me, and calling my attention to the statement on the top of page 3 of that statement,

“McEvoy told me that the first well had been brought in on production and was producing 200 barrels of oil per day * * *”

The figures “200” in typing are ringed, and the words and figures as follows in pencil are inserted, “350 is correct.” [183] That is in my handwriting and I put it

(Testimony of James M. Evans)

on several months ago, possibly last December. Mr. Hampton was in the office of the Securities and Exchange Commission on the 17th floor of this building and his statement was being reviewed by Mr. Manster and myself with him. I do not recall that he saw it. We were asking him questions about it and went over his statement. In the course of that discussion Mr. Hampton stated that 350 barrels of oil was correct, so thereupon I put a ring around the figure "200 barrels" and made the notation, "350 is correct." Hampton was in the room but I do not know whether he saw it or not. I do not recall (Tr. 1169). I do not believe the indictment was discussed with Mr. Hampton at that time, and I do not recall whether I asked him whether the statement was made that it was 350 barrels, or whether he volunteered the information (Tr. 1170).

Q. Calling your attention to the testimony of this witness Hampton, Page 830, on Line 9:

"Q. By Mr. Cannon: Calling your attention to this Exhibit G in evidence, the third page, the first sentence: 'During the course of the conversations McEvoy told him that the first well had been brought in on production and was producing 200 barrels of oil per day.'

"Did McEvoy tell you that?"

"A. Yes, he said it was good for 350 barrels, that it was producing 350 barrels.

"Q. Said it was producing 350 barrels?"

"A. Yes.

(Testimony of James M. Evans)

“Q. Now, then, whose handwriting is this where that pencilling is around the edge, ‘350 barrels is correct’? [184]

“A. I don’t know. I don’t know a thing about it, sir.”

Does that refresh your recollection as to whether you told him about it?

A. It doesn’t refresh my recollection. The situation is as I described it. (Tr. 1172)

(Witness continuing)

I met Mr. Murphy probably three years ago. He is the man who has been mentioned in this case as owning one-half of the Collins contract. I talked with him about the case, and we subpoenaed him as a witness, but he is not here, but he is in New York City. I am informed that he is employed by the Treasury Department and was at that time engaged in the Fifth War Loan Drive and he was excused from attendance here as a witness after a conversation with Mr. Carr, the United States Attorney. I cannot say that I knew that he had a participation in the Collins contract. I do not recall that he told me that he had such a participation. Mr. Brown, the man who is named in the indictment as being one of the persons to be defrauded, was in Los Angeles at the time this trial commenced, and remained here for several days. I talked with him very briefly, and excused him and told him we did not need him in this case.

(Testimony of James M. Evans)

Direct Examination

By Mr. Blue:

Dr. Hutchinson was also subpoenaed to appear in this case and presented himself here as a witness several days ago, but we did not call him as a witness.

Cross-Examination

By Mr. Manster: [185]

When Mr. Brown arrived here pursuant to a subpoena, it was the first occasion that I interviewed him, or had ever met him.

Redirect Examination

By Mr. Cannon:

But I examined the statement made by him to a representative of the S. E. C. before I had him subpoenaed here as a witness. (Tr. 1175)

(Witness excused.)

ROY P. DOLLEY,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

My name is Roy P. Dolley, I am an attorney, and I maintain my office in Los Angeles, and have been an attorney for 19 years, during the whole of which time Mr. Gordon has been a client of mine, and still is a client. I had something to do with Section 2, Township 25 South, Range 18 East, M. D. B. & M. in 1938 (Tr. 1177). In 1935 the Traders' Oil Company took a judgment against Mr. Gordon for a sum of \$3,757.00. Thereafter, Gor-

(Testimony of Roy P. Dolley)

don made a settlement of that judgment and paid it off, and the question arose as to the best way to redeem the title to it in view of the fact that it had been previously sold under an execution sale by the Sheriff of Kern County. I arranged to acquire for Mr. Gordon in the name of my secretary, Margaret E. Blynn, a Sheriff's deed conveying the property to her after the redemption had been effected. M. E. Blynn was my secretary in 1938 and is still my secretary, and when the property was transferred to her by Sheriff's deed, it was done at my direction and suggestion, upon the instructions of Mr. Gordon for whom I was acting. In this transaction M. E. Blynn was not acting [186] for herself, but was acting for Mr. Gordon and was trustee for him as a matter of convenience. Miss Blynn has never paid taxes on the property. Plaintiff's Exhibit 35 in evidence, being a "Quitclaim Deed," from M. E. Blynn to Mary L. Gordon, a married woman, was prepared by me, and I directed her to sign that deed, and the purpose was to convey the property back to Mr. Gordon. I, as an attorney, would say that in December of 1938, Mr. Gordon was one of the owners of that property; there isn't any doubt about it. I know Mr. Gordon's reputation in the County of Los Angeles for truth, honesty, and integrity is very good.

Cross-Examination

By Mr. Manster:

I have been doing Mr. Gordon's legal work for a period of more than 12 years without compensation, in view of the fact that we did represent him in previous times when

(Testimony of Roy P. Dolley)

he did, many years ago, pay us very substantial fees (Tr. 1182). Mr. Lacy is Mr. Gordon's nephew, and is a very prominent man in this community, and among other things is the head of various industrial enterprises and also a director of the Farmers and Merchants Bank in Los Angeles. I have done work for Mr. Lacy, but I do not consider him a remunerative client. On November 13, 1935, the Traders' Oil Corporation recovered a judgment against Fred V. Gordon, and on January 13, 1937, there was an execution issued against this property in Kern County, and Mr. Gordon's interest in this property was sold pursuant to the Sheriff's sale, in 1937. The property was acquired by M. E. Blynn as the record owner, on May 4, 1938, to effect a redemption from the Sheriff after Mr. Gordon had paid off the judgment to Traders' Oil Company (Tr. 1184). Mr. Gordon was the owner of the property, whether it was recorded or not. It would make no difference. On April 1, 1938, [187] there was executed by Traders' Oil Company an assignment to M. E. Blynn of all the rights, title and interest of that company in the property. I have some documents to show that between December, 1938 and December, 1939, Gordon had an interest in this property. He was the owner all during that time. The Sheriff levied an execution sale on this property, and in such an instance, involving real property in California, the owner of that property has still a right in it. The right to redeem it by paying

(Testimony of Roy P. Dolley)

the judgment. Mr. Gordon did pay the judgment, and did make the redemption, and now the only problem involved there is that he did so through my secretary rather than to do it himself. There was a reason for that. The correspondence here shows the payment of the money by Mr. Gordon, and in behalf of Mr. Gordon after the money was paid to redeem and after the Traders' Oil Company had assigned to M. E. Blynn the Sheriff's certificate of sale, we then sent the balance of the documents up to the sheriff, and the sheriff issued this certificate, or this sheriff's deed to M. E. Blynn on May 4, 1938. During all the time, Mr. Gordon was the owner of that property, by virtue of the right of redemption, and also by reason of the fact that he did redeem it sometime prior to May 4, 1938, and received the sheriff's deed on that date.

Redirect Examination

By Mr. Blue:

I have known Mr. Gordon for 20 years, and there was a time when he paid my law firm rather handsome fees. He hasn't been able to do so for the last few years, so, as a result, I haven't been paid. He was interested in various oil companies that we represented, that were doing considerable drilling and development in California. At that time [188] he was plenty times over a millionaire.

(Witness excused.)

RALPH ARNOLD,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Ralph Arnold, and I am a geologist and have been such for about 45 years, and studied geology in Stanford University and received my degree in geology there, and have practiced geology ever since, mostly in California. I have represented the United States Government as geologist on work three different times, as follows: from 1903 to 1909 as a geologist on the United States Geological Survey; later, I helped organize the United States Bureau of Mines, the Petroleum Division; and during the last war I was on the Income and Excise Profits Tax Board, in charge of the Oil, Gas Mining and Lumber Division (Tr. 1190), for the United States Government, Bureau of Internal Revenue. I am the Ralph Arnold that mapped the field at Kettleman Hills in 1907 for the United States Government. In my profession as geologist I have geologized prior to production certain oil fields in California and which subsequently were drilled on my recommendation and became oil fields. It is difficult to say how many because some of the fields are divided into small units and the areas that we would recommend would include a considerable number of these smaller fields that have been brought in. Kettleman Hills would be one illustration as one of the fields that we outlined geologically with possibilities, and the land was so classified and the classification was accepted by the Government, and all this work was done before there was any

(Testimony of Ralph Arnold)

production in the Kettleman Hills, [189] and that same line of work was carried on from Coalinga south to Midway and to the Sunset Field. We classified all that land for the Land Office and the withdrawals were based on our geological work and on our classification. (Tr. 1192) They were withdrawn from agricultural entries in order to protect the oil men in their right to get their title through drilling rather than through homesteads. While I worked for the Government I had an occasion to make a geological survey of what is generally known today as the Devil's Den area, and made a geological survey of Section 2, Township 25, south range 18 East, spending about two weeks in the area. I have with me the map showing my geological conclusions reached while I was employed by the United States Geological Survey, and having to do with Section 2. This map was printed in 1908 or 1909 and has been in constant use ever since.

(At this point the document referred to was marked for identification as Defendant's Exhibit H.)

(Witness continuing)

Section 2, Township 1, 25 range 18 is shown on this map, and lies within the boundaries of the land that we had classified as possible oil territory at the time we made this examination. At the time we made this map there were no wells drilled in the United States, I guess, over 5,000 feet deep. So, we had to limit our guess on the area to the depth of 5,000 feet. When I classified this territory from the standpoint of geological possibilities, it was my opinion that this particular property did have possibilities of producing oil, based on the formation and

(Testimony of Ralph Arnold)

dips and general geological information that we could glean from the surface (Tr. 1196). Nothing materially has happened since that time to cause me to change my mind as to the possibilities of oil production in that particular section. I am familiar with the [190] development of the Lube Oil Company well on Section 2. I was shown the log of that particular well, and I wrote a preliminary report on it based on the work that had been done after I had made this examination. (Tr. 1197)

(A document was marked Defendants' Exhibit I, for identification.)

(Witness continuing)

The memorandum included in that Exhibit I was actually written or dictated by me, and to the best of my belief is true.

(The document heretofore marked Defendants' Exhibit I, was received in evidence, and Mr. Blue read the following portions thereof to the jury:)

“MEMORANDUM RE SOUTH DEVIL'S DEN
“FAULT STRUCTURE, KERN COUNTY,
CALIFORNIA

“BY RALPH ARNOLD

“This memorandum supplements and accompanies the report on this territory by Rollo Ellis under date of April 29, 1936. The writer has read this report and concurs in the general conclusions contained therein. The reader is referred to Mr. Ellis' report for all details regarding the region.

(Testimony of Ralph Arnold)

“When Harry R. Johnson and the writer mapped this region in 1908, no one realized the important part that faults and overlaps play in the accumulation of petroleum and gas in California. Although we recognized the oil possibilities of the territory under discussion and classified it as oil land, nevertheless we failed to note the very important economic significance of what writer calls the Cross Fault which causes and passes through Dagany Gap in a northeast-southwest direction and which is [191] shown on the map.

“The rocks on the northwest side of this fault have been moved toward the northeast, with a resultant reflection in the topography and the formation of the Alamo Solo Spring, which rises from the fault. There seems to have been little or no vertical displacement along this fault except possible east of the gap. The oil and salt spring in Section 25-28-18 is a point on the other important feature of this structure, the Faulted Anticline. (See photographs 6 and 7).

“The triangular block bounded by the Faulted Anticline on the southwest, the Cross Fault on the northwest and the township line (roughly) on the east, offers good opportunities for the development of commercial quantities of oil and gas. The beds in this block dip toward the northeast and plunge toward the southeast. The two faults act as closures on their respective sides of the block. There is a fine gathering ground toward the southeast in the structural ‘low’ between the south end of the Kettle-

(Testimony of Ralph Arnold)

man Hills structure and the Lost Hills elongated dome. The presence of oil in commercial quantities in the block is proven by the Standard and Richfield wells in Section 14-25-18, and the southward extension of the field is suggested by the oil spring and commercial wells in Section 25-25-18. The wells should vary in depth from about 1000 feet in the shallower locations to 7000 feet or more on the eastern limit of production. The gravity of the oil should range between 19' and 45', the lighter oil coming from the deeper sands. [192]

"In view of the favorable conditions prevailing in the area, the writer recommends the development of the block, beginning on the west side and extending operations by steps toward the south and east.

"(signed) Ralph Arnold

"San Francisco, California

"April 29, 1936." (Tr. 1200-1202)

(Witness continuing)

My opinion regarding that particular section is still the same today as it was then. It is true that my structure map shows a very steep anticline coming down through the Pyramid Hills, the axis of it slightly to the westerly from this property, and plunging under the valley floor to the generally easterly direction, southeasterly direction. But I would not say that by reason of that particular dip, of that anticline, that to find oil there was improbable. By reason of that structure I would come to the conclusion that any place along the axis of that

(Testimony of Ralph Arnold)

anticline, would be worthy of drilling a well for development. At this moment, there is being erected a derrick within five miles of this section 2, southeast of it, by two of the best companies in the State, to test an area which is not unlike this area in section 2. They intend to go 10,000 feet before they get through. Those companies are the C.C.M.O., which is the oil company of the Santa Fe Railroad, and the California Company, which represents the Bank of America. I submitted my opinion from a geological standpoint to these two companies and their drilling is based upon my recommendation. While conditions are somewhat different, it is along the same general trend and strike of the formations. I have known Fred Gordon about 40 years, and [193] know that he has been in the oil business even before I was. I know his reputation in this County for truth, honesty and integrity is good. I think I have known Mr. Schirm for probably 5 or 6 years, and he and I worked on certain deals. I know his reputation in the County of Los Angeles for truth, honesty and integrity, and it is good.

Direct Examination

By Mr. Cannon:

I believe I have known Mr. Morgan for 6 or 8 years, and know his general reputation for truth, honesty and fair dealing in the community in which he resides in Salt Lake City and thereabouts. His reputation is good.

(Testimony of Ralph Arnold)

Cross-Examination

By Mr. Manster:

I mapped or geologized this Section 2 in the Devil's Den area some time between 1903 and 1909. The map in Defendants' Exhibit H is dated 1909, but the work was done in 1907 or 1908. (Tr. 1207) I have made no investigation or recent studies of Section 2 with reference to its possibilities for producing oil, since the report that I made in Defendants' Exhibit I, in 1936. I did not supervise the drilling of the Lube Oil Company well in 1936 or 1937, but I examined certain cores that were extracted from the well and I have seen the electric log. I do not know whether that well ever produced any oil. I do not know that operations on the well were suspended in 1937. I do not know the exact depth to which it was drilled. Section 2 in this Devil's Den area of Kern County shows possibilities for the production of oil.

Reading from Bulletin No. 118, of the California [194] Department of Natural Resources, Division of Mines, where it says:

“The oil of the Devil's Den district has accumulated in beds of the Oligocene Wagonwheel formation. In the main field these formations dip homoclinally, but oil is also produced from the Alferitz anticline. The productivity of the wells is so small as to be of minor importance.”

Q. Now, would you agree with the statement, the last sentence, that “the productivity of the wells is so small as to be of minor importance”?

A. No, sir.

(Tr. 1211-1212)

(Testimony of Ralph Arnold)

(Witness continuing)

I know the authors of this article very well but disagree with the conclusions drawn by them, although I have read the entire article. I could not answer as to whether or not any oil has been produced from Section 2 in Kern County, nor do I know if any wells other than Lube Oil Company Well No. 1 has ever been drilled in that section.

(Witness excused.) (Tr. 1212)

Re-Direct Examination

By Mr. Blue:

The fact that a dry hole is drilled in a section in the Devil's Den area would not condemn the entire section. There were 21 wells drilled in the Kettleman Hills before they brought in a productive well.

Recross-Examination

By Mr. Manster:

Those 21 wells were drilled in an area 2 or 3 miles wide and 5 or 6 miles long. I think I approved the [195] recommendation for the drilling of the Lube Oil Company well in Section 2. I do not know that it was successful for the production of oil. The drilling of a dry hole within three-quarters of a mile of a certain tract would not necessarily be any indication that the tract in question would not produce oil in commercial quantities. You can drill a well within a hundred feet of a place where there is a fault involved and it doesn't tell you anything about the conditions on the other side of the fault.

(Witness excused.) (Tr. 1215)

JOHN H. WENTS, JR.

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is John H. Wents, and I am a Consulting Petroleum Geologist and Engineer, and have been consulting for about six years. Prior to that I was practicing the profession of geologist and engineer in Los Angeles and have had college training in petroleum engineering and petroleum geology. I attended Stanford University 4 years, and U. S. C. for 5 years. In my profession I examine oil properties on behalf of clients for the purpose of determining values. I am engineering geologist for Dominguez Estate Company, Carson Estate Company, Harold C. Morton & Associates, Lebow & McNee, George Nordenholdt, who was formerly director of Natural Resources, J. Paul Getty, and I have been employed from time to time by the Division of Lands, Department of Justice, and by the County of Los Angeles. In 1938 I was in the business of appraising properties from the standpoint of oil values, and familiar with and did appraise properties in the westerly and [196] north-westerly portions of the city of Torrance, in Los Angeles County, and evaluated royalties for the purpose of purchase or sale in Torrance. I did this in 1938 as an independent consulting engineer. An overriding royalty bears no part in the operation expense on a well unless in the assignment it is so worded that it does, while a participating royalty is a type of a working interest and bears some proportionate part of the expense of operating or producing the oil. That is the main difference between

(Testimony of John H. Wents, Jr.)

the two. In 1938, particularly in the month of September, I was familiar with the values of property in the Torrance Field located in the immediate vicinity of 237th Street between Narbonne and Eshelman. (Tr. 1219) We called that a sector of the Torrance Field. From my experience, I would say that a one per cent overriding interest with nothing deducted for the cost of operation, on a one acre piece located between 236th and 237th Street, between Narbonne and Eshelman Avenue was worth in the neighborhood of \$1200.00, if the well was a contemplated well, or a well which was drilling. If the well was on production the value of the royalty would depend on the production. That \$1200.00 is for each one per cent (Tr. 1220-21), and a 50 per cent interest would be worth \$60,000.00. If that well was drilled in November, and was contracted out by responsible persons, while the well was drilling, those per cents would be worth 1200 a per cent; the value would not change until the well was completed. If the well was completed on that property, and the original production was 124 barrels per day, 27 gravity oil, and at the end of that month of December, 1938, production was approximately 100 barrels a day. I would say that the reasonable market value of a one per cent overriding interest in that well would be in the neighborhood of \$1400.00 a per cent, or \$70,000.00 for 50 per cent. (Tr. 1222) [197]

I am generally familiar with the initial production of wells in that particular area in 1938 and 1939. There were about 55 or 60 wells, I think, drilled in the immediate vicinity of 237th and Eshelman, and if a person had a lease on that particular block of an acre of land, that person would be entitled to believe that if he drilled

(Testimony of John H. Wents, Jr.)

that well to the second Del Amo sand, that he would get a productive well. A participating royalty in an oil well in that same block, in January, 1939, was worth approximately two-thirds of the amount the overriding royalty was worth. That is to say, it would be worth about \$800.00 a per cent. The value after the well came in was greater than it was while the well was drilling. I have known Mr. Gordon quite well for the last 10 or 12 years, and know his reputation in this county for truth, honesty, and fair dealing, and I think it is of the highest. (Tr. 1225)

Cross-Examination

By Mr. Manster:

A well in this block that we have described, producing 100 barrels a day around the end of December, 1938, would sell at the rate of \$1400.00 for a one per cent overriding royalty. If the production is higher, the selling price would be higher. It is a foregone conclusion that production will decline, and if production declines the value of the royalty itself becomes less. The worth of a royalty interest would be entirely dependent, in a producing well, on the high and low production of a particular month. On the high production of 120 barrels a day, just taking the production capability rate, the value of the royalty would be \$1400.00. If the production was 70 barrels, and that had been the high production, then the value of that royalty would be [198] approximately \$1,050.00. The thickness of the producing oil zone in that area in the Torrance Field was approximately 70 or 80 feet. The drainage is not limited by the area or the surface acreage upon which the well is located. However, the per acreage recovery per acre-foot there

(Testimony of John H. Wents, Jr.)

was better than 550 barrels, I believe. (Tr. 1232) I never watched those particular wells, Plymouth's Wells 1 and 2, during the time that they were drilling, but I know of their locations with respect to the acreage, but I do not know the general particulars regarding their completions, shutoff points or perforations, or anything (Tr. 1235), nor their production rates. My estimate of a value of \$1400.00 for one per cent interest was based on general averages on surrounding wells in that particular area.

Re-Direct Examination

By Mr. Blue:

(At this time, the Electrolog of Plymouth Well No. 1 was offered and received in evidence.)

(Witness excused.)

ROLLO ELLIS,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Rollo Ellis and I am a Petroleum Geologist and Operator, and in 1936 was President of the Lube Oil Company, which had a lease on 200 acres from Fred Gordon. Lube Oil Company is a Corporation and has an office in the Financial Center Building in San Francisco. The lease called for a royalty of one-sixth to the landowner, and after getting [199] the lease in Section 2-25-18, I proceeded to drill a well on that Section. Prior thereto I had checked over the Section from the standpoint of geological possibilities for producing oil, and

Testimony of Rollo Ellis)

spent about two weeks on the property making a check. I also got information from the Associated Oil Company and from Dr. Ralph Arnold, to make up the final picture before we spudded in on Thanksgiving Day, in 1936, and drilled on that well until sometime in April, 1937, spending about \$70,000.00 in going to a depth of 4,280 feet. (Tr. 1242) While drilling down in the hole we had a lot of oil indications, and passed through the Temblor zone, which is a productive zone of the Kettleman Hills. We actually shut down the well because we ran out of money, and suspended operations in 1937. I am still trying to make arrangements to refinance the operation so as to go ahead. The well has only been abandoned within about the last two weeks, but it was not abandoned as a dry hole, but so as to release the bond placed against the well for properly abandoning it. In December, 1938, we had not abandoned that well, and at that time we thought most certainly we would be able to go ahead with it. I have here the Schlumberger Electric log and the driller's log of that well (Tr. 1246), showing the formations through which we passed. From time to time we took cores in this well. It was hard drilling. This Schlumberger is correct as of February 19, 1937.

(This document referred to is marked Defendants' Exhibit K, and received in evidence.)

(Witness continuing)

I have another map taken from my folder, a map called "Pyramid Hills and Devil's Den Area" indicating that the Standard Oil of California, General Petroleum, and Standard Oil of New York, had leases in that area. I had under lease [200] at that time about 1,000 acres, in

Testimony of Rollo Ellis)

addition to the Gordon land. I had some leases from the University of California and from Tres Tietes. (Tr. 1250)

(The document referred to was marked Defendants' Exhibit L, and received in evidence.)

(Witness continuing)

In the winter months of 1938-1939, Morgan came into my office in San Francisco, and I talked with him in reference to Section 2-25-18. He had a card from Gordon asking me to explain what I knew about that area to **him**. I did that, and probably gave him a couple of hours' time. Just previous to that I had gotten up this report that I am using now, and I gave him Defendants' Exhibit I in evidence; I explained to him the work that I had done in that particular area. This was in late December or in the early part of the year. Morgan asked me particularly as to my opinion of this 40 acres described in the northeast quarter of the northwest quarter, Section 2, Township 25, south range 18, and I told him I believed it was oil land. I first met Mr. Gordon back about 1930, but I did not become very well acquainted with him until several years after that. I knew his reputation in this community for truth, honesty and fair dealing, and it is very good.

Cross-Examination

By Mr. Manster:

The lease I took from Gordon in 1936 covered approximately 200 acres in Section 2, but it did not include the 40 acres in the upper northeast corner of the tract. I think I paid Gordon \$500.00 upon the signing of the lease, and then there was to be \$500.00 per month rental until

Testimony of Rollo Ellis)

the drilling or something of that sort began. I suspended drill- [201] ing on this Lube Oil Company well in April, 1937, and have never sold a barrel of oil out of that well. The well was never finished. After 1937, drilling operations have never been recommenced. Mr. Gordon never put any of his own money in that well. I do not know anything about Mr. Gordon's connection in these fields between Plymouth Oil Company and Union Associated Mines. My dealings with Mr. Gordon were solely in connection with the fact that he was lessor and I was lessee. (Tr. 1256)

(Witness excused.)

JOHN W. LUTER,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cannon:

My name is John W. Luter, and I live adjacent to Beverly Hills, California. I am an attorney and have been such since about 1909. I am acquainted with James H. Collins and know his general reputation in the community where he resides for truth, honesty, veracity, and fair dealing, and it is good.

Cross-Examination

By Mr. Manster:

I am an attorney at law. Several years ago I served under the Municipal, and I also served as Pro Tem for several years as a judge in the Superior Court. I have known Collins generally for some three and one-half

(Testimony of John W. Luter)

years, and have had some business dealings with him and his wife, and I live, as I say, right in that vicinity. Insofar as I have heard in that general community, all the people that I know who have known him have spoken well of him, and my [202] dealings with him were satisfactory. I know nothing whatever about Mr. Collins' connection with the sale of stock of Union Associated Mines Company. (Tr. 1259)

(Witness excused.)

SIDNEY FISCHGRUND,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Sidney Fischgrund, and I am one of the defendants in the case. I am an attorney at law, and 37 years old. I was admitted to practice law in 1931, and have practiced in Los Angeles since three or four years after I was admitted. Prior to the time that I began to practice law, I was in the insurance and real estate business. I began to practice law about 1934, and at that time was 27 years old. When I first began to practice I was associated with Henry Hayes, and after that I took an office in the suite of Richard A. Dunnigan in the Foreman Building. That was about 1935, and I am still in that office. I was not actually associated with Mr. Dunnigan. However, frequently we would discuss our problems together, and I would call him in on a case that I perhaps could not handle, and he would ask me to handle cases of his that he could not handle, or when he

(Testimony of Sidney Fischgrund)

was busy. I paid my own rent, my own telephone bill, and my proportionate share of the stenographic expense. I was a free and independent agent acting as an independent lawyer. Up until August of 1938 I had not had any experience as a lawyer in oil matters, except that many years ago my mother and I purchased a lot in Wilmington and it was subsequently leased to an oil company that drilled a community well, and [203] after that well was drilled a royalty was paid every month. We are still getting a very small royalty from it. In the late summer of 1938, I signed the original Articles of Incorporation of Plymouth Oil Company and became its Vice-President. I was one of the original Directors, and Fred V. Gordon and Guy Davies were the other directors. Prior to the formation of that company, I had discussed its formation with Mr. Gordon and Mr. Davis. (Tr. 1263) It is pretty hard to say when I first met Mr. Gordon, but it was prior to the time that I signed as an incorporator of this company, and I met Mr. Davis before I had become a member of the company. After the company was organized, we commenced taking oil leases on various properties in Southern California; numerous leases were obtained on prospective oil fields. I participated in these activities. The office was constantly inhabited by oil hounds, or lease hounds, that is, persons who were interested in leasing or obtaining leases in the various fields. But prior to that time I had had no experience with lease hounds and met them when I became a Director of Plymouth Oil Company. The plan was to obtain oil leases in prospective oil fields, and if the fields were developed we could then obtain financing for the drilling of an oil well in the prospective field or sell the

(Testimony of Sidney Fischgrund)

lease on a basis whereby the Plymouth Oil Company would retain an interest in the well. I personally went out to the Carmenita Field, which was being drilled right near Norwalk, near Los Angeles, and together with Mr. Bray's assistance, we went out and leased up acres of ground there on property that was adjoining leases, of an oil well that had been drilled or was in the process of being drilled by John McKeon. (Tr. 1266) The well was down to about 7500 feet and Mr. McKeon came in the office and was very enthusiastic about the certainty of [204] the well being brought in in that Field, and I left the office for about two weeks and leased up any number of parcels of land and placed them in escrow. That was the program of the Plymouth Oil Company. At that time, the Torrance Field was considered the hot spot; the most active oil center in southern California. It is difficult to remember exactly who was in the office about this time, but Mr. Schirm would come in and say, "Now, look at this, this particular article, about what is being done in Torrance." Mr. McKeon would come in and would mention something about his well and about Torrance Field being the hot spot. Certain leases were submitted to the Board of Directors of Plymouth but I believe several of them were obtained in various areas around the place where they were drilling. The term "lease hound" is not used in any derogatory sense. They are respected in the industry. A "hot spot" was a place where there was an absolute certainty of bringing in the well, because the drilling operations around that particular area had proved successful, and every driller in the country was trying to drill in that particular area. I first heard of Union Associated Mines Company after

(Testimony of Sidney Fischgrund)

we had obtained these leases, about the latter part, or toward the middle part of 1938. (Tr. 1268) It would be impossible to remember the first conversation with anyone concerning Union Associated, but to the best of my memory I talked to Mr. Gordon and with Mr. Davis, and I am sure I talked it over with someone else. I think Mr. Morgan was down here at one time and I discussed it with Mr. Morgan and Mr. Dunnigan and Mr. Siens. I discussed the matter of the Plymouth Oil deal with Union Associated with Mr. Dunnigan, and relied upon what he told me. He was a member of the bar for 25 years and I think he was the first one who introduced me to Mr. [205] Siens and various other individuals who were in the oil business, and said Siens knew more about the oil business than possibly any other man, and could build a company because he knew how an oil company could be developed. He said Gordon was one man who had been to every oil field in the United States, and knew more about the oil fields, and he told me that Gordon at one time had unlimited credit as far as the Farmers and Merchants Bank was concerned; and had a letter of credit whereby he could spend as much as a half a million dollars on behalf of the Farmers & Merchants Bank. He told me that Guy Davis was formerly an auditor of the Richfield Oil Company and a man who knew all of the intricacies and the manner in which the books and records of an oil company should be kept. These are the sum and substance of the various conversations that I had with Dunnigan, Siens, Gordon, Davis and Morgan, as a means by which an oil company could be formed and financed. From that time until now I have been Vice-President of the Plymouth Oil Company, and a Director and attended

(Testimony of Sidney Fischgrund)

Directors' meetings. I never at any time knowingly did anything that was wrongful in my position, and I do not think there was anything wrongful about anything that was done as far as this transaction was concerned and as far as all the parties are concerned.

(At this point, the witness, Sidney Fischgrund, was temporarily withdrawn from the stand.)

JOHN R. PEMBERTON,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is John R .Pemberton and I am a Petroleum [206] Geologist and Engineer. I graduated from Stanford University in 1909. After my graduation I was an instructor in the University for a year and then I was engaged by the Argentine Government in land classification, and lived in that country for five years. I returned to this country and was in business in Los Angeles for two years, then in the Mid-Continent for several years, and returned to Los Angeles where I have been continually since about the middle of 1921. When I came to Los Angeles in 1921 I was employed by the Pan-American Petroleum Company, until the end of 1931, although the Pan-American Petroleum Company had been sold in 1923 or 1924 to Pacific Western Company and my employer was the Petroleum Securities Company, another of the Doheny interests or corporations. (Tr. 1273) During the year 1938, in addition to being a petroleum geologist and petroleum engineer, I was a so-called oil umpire for

(Testimony of John R. Pemberton)

the California Petroleum Producers, and I had held that office from 1932 until the middle of 1940. As such oil umpire, my duties involved the stabilization of the crude oil producing industry and a tabulation of all of the oil fields in the State of California, their locations, depths, ability to produce, gravities of oil, owners, the market demand for oil, and the allocation to the producers of crude oil of the consumptive market demand for oil for the purpose of not producing a surplus and causing unpleasant things to happen to the industry, and affecting labor and prices and insurance and taxes and everything. (Tr. 1274) I am generally familiar with the development of the deep sands at Torrance in 1938 and 1939, and familiar particularly with that portion of the extension of the Torrance Field being on 237th Street between Narbonne and Eshelman Streets. I cannot say that I know generally the number of wells that were drilled to the Del Amo sand in [207] the Torrance Field in 1938-39, but roughly, I imagine that there would be 50 wells but I might be quite wrong there. There were a considerable number of wells. (Tr. 1276) The Torrance Field was an oil field, however, prior to 1938. I would say, roughly, that it was brought in in 1922, and has produced continuously since 1922, and it is still producing. On the map that you show me I find a well marked "A-226" and in the year 1938 wells drilled at the location of that Well No. 226 would in my opinion be producing oil wells.

(The document referred to was marked Defendants' Exhibit M. and received in evidence.)

(Witness continuing)

I have known Fred V. Gordon I think about 20 years, and knew him when he was Vice-President of Cal Pet.

(Testimony of John R. Pemberton)

Mr. Gordon's reputation in this community for truth, honesty, and fair dealing, so far as I am concerned and know, is good. I know Christopher Schirm, and have known him about 20 years, and knew him when he was an employee of Pan American Company. Mr. Schirm's reputation in this community for truth, honesty, and fair dealing is very good.

Mr. Manster: No questions. (Tr. 1281)

(Witness excused.)

SIDNEY FISCHGRUND,

recalled as a witness by the Defendants, having been previously duly sworn, testified further as follows:

Direct Examination

(continued.)

By Mr. Blue:

I have not knowingly done anything wrong in any of my actions, and I still believe I have not done anything wrong. I myself purchased stock in Union Associated Mines [208] and I purchased the 1500 shares, as shown in the 15 certificates which you show me. I bought that stock in August or September, 1938.

(Documents referred to were received in evidence and marked Defendants' Exhibit N.)

The \$300.00 check drawn by me in favor of Plymouth Oil Company was given by me in payment of certain shares of Union Associated Mines stock; as was also a check for \$50.00 made payable to the Plymouth Oil Company, dated September 8, 1939; as was also the check dated December 13, 1938, made payable to Young, Clark

(Testimony of Sidney Fischgrund)

& Company in the amount of \$152.50. (Tr. 1282) The check for \$1.70, dated February 14, to Young Clark, in 1939, was given to them as a balance owing on the purchase of stock made on December 13, 1938. That small balance was probably for insurance or some charge made by that company through whom the stock was purchased. I paid 3 cents a share for the stock I bought from Young Clark. I also bought stock represented by 5 other certificates for 1,000 shares each, one thousand in my own name, one thousand in the name of my sister, Edna, one in the name of Manuel Klein, another in the name of Manuel Klein, all through Young Clark. The fifth certificate is missing, but I bought this stock on the day, I believe that the well came in. In my opinion, it was easy to compute that the stock should be worth more than 3 cents a share on the day when the well came in, and judging by the production of wells in the immediate vicinity, it would be easy to calculate at that price I paid that the stock would be worth more money, and I am sure it would have been if the wells had staid up at the production. In other words, I bought the stock because I felt that I was making a good buy on the market. [209]

(The stock certificates were received in evidence and marked Defendants' Exhibit O.)

(Witness continuing)

During all of this time, and up to the time I was indicted, I knew Mr. Gordon. He did not keep his office at the office of the Plymouth Oil Company, but in the Subway Terminal Building. Mr. Gordon very rarely and very infrequently came to the office of the Plymouth Oil Company. I knew Mr. Schirm. He never did any

(Testimony of Sidney Fischgrund)

work for the Plymouth Oil Company. He would come in and try to lease, and he might take the lease, and I think he would pick one in Lacy's name and then come in to the Plymouth Oil Company and discuss the matter of that lease with us and make an assignment or have Lacy make an assignment of that lease to the Plymouth Oil Company, but he never worked for that company. He worked as an individual, for himself. To my knowledge Mr. Schirm had nothing whatever to do with the Plymouth Oil Company or the Union Associated Mines deal after December of 1938. I never did receive any money from the Plymouth Oil Company, although possibly there may be a check or two for money I had expended for the Plymouth Oil Company. There may have been a wire I sent or some incidental expense, but so far as I am personally concerned, I never received any money for anything I have done. I never got back that \$300.00 or that \$50.00, and never did any legal work for Union Associated Mines, and never received any money for acting as Vice-President or for attending Directors' meetings. I am a stockholder of Plymouth Oil Company, and I never did receive a dime of money or anything outside of these stock certificates here from the Union Associated Mines Company. There is not anything that I can think of at the present time that causes me to believe that anything that I did in [210] 1938, to this present day, was dishonest. I personally appeared before the Securities and Exchange Commission in Los Angeles, and made a voluntary statement to the Commission in the presence of Mr. Evans, sitting at this table; and I offered to give him all of the exhibits and evidence that I had in my office, as evidence of my good faith, and of the

(Testimony of Sidney Fischgrund)

operations of the company, and I thought I had convinced him of that fact. That was in 1940, I believe. (Tr. 1288)

Cross-Examination

By Mr. Manster:

When I came before the Commission, I realized that the Commission had the power of subpoena, but I didn't have to answer if I didn't know. You know as an attorney, and you know that I could have advised all of the defendants not to answer if I had found anything wrong; and the Commission could not compel me to testify under oath if I felt that it would incriminate me. I am one of the three incorporators of the Plymouth Oil Company, which was incorporated in August, 1938, and the capitalization was one million shares of 10 cents par value stock. Only one thousand of the one million shares were issued, 400 of which were issued to me as Vice-President, 400 to Fred Gordon, and 200 to Guy B. Davis. We were vice-president, president and secretary-treasurer, respectively. No other stock has been issued since these original qualifying shares were issued. The Plymouth Company was really a closed corporation, organized as such, and continued as such, and one of its objects was to acquire leases for the purpose of drilling oil wells.

Q. It had some other purposes too, didn't it? For example, I refer to Paragraph D in the Articles of Incorporation.

A. May I interrupt you, Mr. Manster? [211]

Q. Pardon me. Let me form the question. Directing your attention to Paragraph D: "To buy, sell or mortgage, hypothecate and/or deal in the stock and bonds of other corporations."

(Testimony of Sidney Fischgrund)

* * * * *

Q. By Mr. Manster: It is one of the purposes of the Plymouth Oil Company to deal in the securities of other corporations, wasn't it?

A. If you read that statement, Mr. Manster, from the beginning, you will find that it permits the Plymouth Oil Company or any oil company to do almost anything they desire, but that doesn't show the purpose for which it was formed.

Q. It is a two-line paragraph just as I have read it, and I will ask you if it isn't a fact that one of the purposes of Plymouth Oil Company was to deal in the securities of other corporations?

A. If you commence with A and read all of it, it is to carry out the business of producing, acquiring, buying and selling.

Q. Would you please direct your answer to that question.

A. That is one of the things that it was to do and could do, and I think you could also find it was to buy real estate in there, but that isn't the purpose for which it was formed. (Tr. 1290-1291)

(Witness continuing)

I do not remember precisely, it was approximately a month after the incorporation of the Plymouth that the contract with the Union Associated Mines was made. I had done a considerable amount of legal work for the Plymouth Company and Mr. Dunnigan and I prepared the contracts between Plymouth and Union Associated Mines. I discussed it with Mr. Dunnigan and I [212]

(Testimony of Sidney Fischgrund)

think I dictated the document and signed it; in fact, signed both contracts as an officer of the company. I prepared the contract between James Collins and E. Byron Siens with reference to Mr. Collins' purchase of a million shares of stock, which had a progressively increasing price scale (Tr. 1292). Before preparing that contract, dated January 17, 1939, I prepared two previous contracts of a similar nature between Collins and the Plymouth Company. As an officer and director of Plymouth Oil Company, I chose to assume the responsibility of that office and I regarded myself as part of the Plymouth Oil Company because I had done a lot of work in connection with it. I had four-tenths of the stock, and I was interested in seeing that it was a success. Gordon and I were the two main figures of the Plymouth Oil by reason of our stock holdings. I know Mr. Adkisson who testified here as a witness. I had an office in the Plymouth office about August, 1938; rather, my office adjoined the office of Plymouth, but it was in an outside suite with a connecting door between it and all of the other offices. There were 100 individuals that came in the Plymouth offices, but Mr. Davis occupied one office that was immediately next to mine, and the office on the far side had a separate entrance to it, a separate entrance to the hall and was occupied by his secretary. Mr. Siens was in the office frequently: In fact, the Plymouth Oil Company succeeded to the office space formerly occupied by the Commercial Oil Company. Siens was not the leading figure in the Commercial Oil Company. He was not a member of that firm. Mr. Siens had a private office right across from Mr. Dunnigan's office. In effecting transactions for the Plymouth Company

(Testimony of Sidney Fischgrund)

such as these two contracts for the wells that were made between Union and Plymouth, and the Collins contract with Siens, I would consult Mr. Gordon about it and would get his opinion [213] and would get his approval. Gordon and I discussed together the activities of the company. In fact, Davis did most of the work in the office. He supervised the drilling of the wells and was out in the field day and night. He did most of the work, actually, as an employee of Plymouth Oil Company, and he received compensation from that company. I know Adkisson was in the office, the same as a lot of other brokers who were interested in the stock of Union Associated Mines Company. I believe I knew Morgan in September, 1938. I did not know that Plymouth Oil was interested in buying the control of the Union Associated Mines Company. There was no correspondence or anything that would lead anyone to believe that the Plymouth Oil Company was trying to control any company. I have listened to the reading of the correspondence which has been read here in court. I believe I knew that Siens went to Salt Lake, but what he did there, I do not know. I heard some discussion in the office that Siens and Adkisson went up to Salt Lake, but I do not believe I knew the purpose of the trip, although I believe there was some conversation to the effect that they were going to contact Morgan with reference to the Union Company. I did not hear that Morgan had an option on 200,000 shares of Union stock. I did not know that Siens had been to Salt Lake and had a meeting with the Union Associated Mines at which a contract between Plymouth and Union was discussed, until afterwards. I assisted in the preparation of that contract. There were numerous con-

(Testimony of Sidney Fischgrund)

versations about transactions as to how the stock of the company would be acquired as a means of furnishing finances for the drilling of the oil wells. I knew that Adkisson and Siens went to Salt Lake on some proposition, but I do not know what it was. I was busy in the office taking care of the work I [214] had, and I cannot keep track of every conversation that went on in the various offices. (Tr. 1299) I do not remember any conversations that were had with reference to the reason why Adkisson and Siens went to Salt Lake. It is difficult to remember how many times Adkisson was in the office; possibly 6, 8 or 10 times, or more. Neither Adkisson nor Siens consulted with me as to the legal questions pertaining to the Plymouth Oil Company, that I recall; but I do recall preparing the Plymouth-Union contract with reference to the first well. It is difficult to remember from what source I received the information upon which that agreement was drawn, but there were numerous conversations and as a result of those conversations that agreement was prepared. I had conversations with Adkisson, Siens, Davis, Gordon and possibly others in the office at that time, and that contract was the result of those conversations. (Tr. 1301) I did not know at that time what the value or market price of the Union Associated Mines stock was, in the early part of September, or middle of September. I did not know that Morgan had purchased those 200,000 shares for \$800.00. I had no reason to question the opinion of Morgan, Siens, or Gordon with reference to the deal between the Plymouth and the Union Company. I did not know that Mr. Adkisson subsequently went to Salt Lake to contact Morgan and Barclay. I think Adkisson had an office elsewhere. He

(Testimony of Sidney Fischgrund)

came to the Plymouth offices occasionally. I never did hear any conversations between Adkisson, Morgan, or anyone else in the office, with reference to raising the market on the stock. I did not hear such terms used as "cleaning up the market" nor terms such as "submitting progressively higher bids for the purpose of buying up the cheap stock." (Tr. 1303) The first well came in about December 13 or 14, 1938. I did [215] not know of the telegram nor did I see it, and I did not know that a telegram had been sent up to Salt Lake reporting that the well had opened at 226 barrels. I was definitely interested in what the well was doing, but I could not prevent others from sending telegrams. The value of the Union Associated Mines Company stock depended to a great extent upon the production of that well. (Tr. 1305) I did not know what the assets were of the Union Associated Company, before this contract between Plymouth and Union was made in September, but I knew the company was a dormant one. The fact that it had lost its charter is of no consequence. I knew it had mining claims in Utah that had a fine background; I knew that the Company had not paid any dividends; I did not know that about two-thirds of its stock had been retired to the treasury for non-payment of assessments, although I knew there were many assessments, but the stockholders had paid the assessments because they thought enough of the company to pay those assessments. I think there were about eight of them. I believe the most active interest that the Union Company had in 1938 was the interest it had in the well to be drilled in Torrance. Plymouth Oil Company had a capitalization of a million shares.

(Testimony of Sidney Fischgrund)

Q. Can you tell this Court and the jury why it is that the Plymouth Company did not acquire these oil leases in the Torrance Field and drill those two Plymouth Company wells and issue its own stock against the interests in those wells? Why is it that they had to make this deal with the Union Associated Mines Company?

Mr. Cannon: Objected to as being immaterial.

The Court: He may answer.

A. The Plymouth Oil Company was formed—we resolved we would never sell stock to the public. As far as we were [216] concerned, we wanted to acquire all the leases we could in proven and unproven fields and prospective oil fields, and if those leases became valuable we wanted to capitalize on them, and we had numerous leases before we entered into this agreement. For instance, there was this lease in the Carmelita Field, and that lease in that territory would have been very valuable if that well had come in. We were very certain it would come in.

Q. Mr. Fischgrund—

A. I am trying to explain to you why we did not sell stock in the Plymouth Oil Company, because we had accumulated these leases and we had resolved not to sell stock in the Plymouth Oil Company, it was to be a closed company, and the plan was submitted that the only way by which you could develop an oil company is to create goodwill and to create an asset that you could capitalize on. Then this plan was submitted whereby the stock would be acquired and the Union Associated Mines, with its background and stockholders and the ability that it had to be listed in Salt Lake City on the exchange there, and the background of those people who were acquainted

(Testimony of Sidney Fischgrund)

with the company, it would acquire something of value then which would be our means of further drilling operations.

Q. Well, a—pardon me. Have you finished?

A. No, I have not. By the acquisition of the stock and the means by which we could enhance the value of that stock, it would enable us to continue drilling other wells in Southern California. (Tr. 1306-1308)

(Witness continuing)

It was one of the plans to re-list the Union Company stock on the Salt Lake Stock Exchange, and it was re- [217] listed. Plymouth Oil Company was a new company. The Union Associated Mines was an old company, and it had stockholders and apparently they believed in its directors. It had the good faith of those people who were members of the company, and we could depend on the list of Union Associated Mines stockholders to sell other stock, provided they had something to show, something of value. (Tr. 1308) All things were taken into consideration, along with the fact that the Union Company had been listed and it would be easier to relist it on the Exchange. The Plymouth Company was a new company, and in an attempt to sell stock to finance the drilling of a well in California by a new company at that time, that had no stock, had no background at all, the means by which that would be done was almost impossible, and this plan of obtaining stock in the Union Associated Mines Company and seeing that it had something of value behind it would enable us to proceed with the further sale of the stock and the drilling operations. In order further to continue drilling operations, there was a purpose in mind in this deal between

(Testimony of Sidney Fischgrund)

the Plymouth and Union companies, to sell the stock of the Union Company in order to acquire money so we could continue drilling operations. I believe that in September, 1938, I knew how many shares of stock the Union Company had in its treasury, but I don't remember now. But I believe that a block of 635,000 shares came out of the treasury of the Union Company. I do not remember that these shares were issued in one certificate to Mr. Schirm, but I do know that all of these certificates were issued to Mr. Schirm merely as an accommodation to the Plymouth Oil Company, and, as I understood it, as street stock. I have since learned that is the customary means by which one sells stock when they acquire a block of stock of that type; and I understand that is customary. [218] I did not know about the larger certificate of 635,000 shares of stock issued in Schirm's name, but I do know of certificates in smaller denominations which were issued for the purpose of having certificates sold to the public, so as to acquire money for further drilling operations that we had anticipated. Mr. Lacy had no obligation to finance the drilling of that well at all, but afterward, when we couldn't sell the stock, out of consideration for Mr. Gordon Mr. Lacy actually advanced \$40,000.00 towards the drilling of the first well. There was no obligation on his part either in writing or otherwise. I believe Lacy furnished money for the drilling of the second well, but he was under no obligation to do so. I do not know it to be a fact that he advanced approximately \$75,000.00 out of his own personal funds to the Plymouth Company for the drilling, but I believe he did. Well No. 1 was drilled in a very short period of time. I believe Lacy advanced a certain amount of

(Testimony of Sidney Fischgrund)

money progressively, as he was called upon to do so, as the well was drilling; although he had no obligation to do that whatsoever. I would not say it was gratuitous because we intended to pay him back, and he would not have advanced the money if he did not intend to get his money back. I did not ascertain for myself what the initial production was on the first well when it came in on December 13. Everyone was excited, and some said it was producing one amount, and someone else said it was producing other amounts, but I do not remember the specific amount. You cannot tell by the manner in which the oil was spurging out of the well the amount of production on the first day. I did not know that the pumper furnished daily reports. I do not think there was a pumper on the well at that time. I do not think the pumper reports were in existence at all at the time, and I [219] think the man who drilled the well said that the well was producing around 250 or 300 barrels, or some such amount. It is not my contention that the pumper reports were not issued every day, but I say that they were not in existence so far as we were concerned at that time, and I never did look at those reports. I never went out to see how good my investment was in the Union Associated stock because I was satisfied to take the statements of those around the office and around the well who said that the well was in production. At that time I believe I was the owner of 20,000 shares, and had spent over \$500.00 for this stock. I went in and spoke to Davis every day about the well, and he said it was producing at some figure or other, and I don't remember now what it was, but somewhere around 200 a day, as I remember. Davis was the field supervisor, out there

(Testimony of Sidney Fischgrund)

every day in the field, and he was the accountant for the Plymouth Oil Company, and was the logical one to have the information about the production of the well. I have never seen the log that was furnished by the Plymouth Company to the State Commission, showing the initial production of that well. I spoke to Mr. Davis on numerous occasions about the production, and he told me what it was, and I don't remember now what it was. (Tr. 1317)

(Witness temporarily excused.) [220]

RUSH M. BLODGET,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Rush M. Blodget, and I am Executive Vice-President of Oil Producers Agency, an independent association of oil companies. I have known Fred V. Gordon since 1900, and I know his reputation in this community for truth, honesty, and fair dealing, and it is good. I do not know the defendant Chris E. Schirm.

Cross-Examination

By Mr. Manster:

I do not know anything about Mr. Gordon's connection with the Plymouth Oil Company, or about his transactions between the Plymouth Oil Company and the Union Associated Mines Company.

(Witness excused.)

WARREN D. WILSON,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Warren D. Wilson, and I am in the oil and real estate business, but retired. I have lived in Los Angeles since 1899. I know Fred V. Gordon and have known him for 35 years. I know his reputation in this community for honesty, integrity, and fair dealing, and as far as I know, it is good.

Cross-Examination

By Mr. Evans:

I do not know of Mr. Gordon's transactions in connection with the Plymouth Oil Company, nor with the Union Associated Mines Company.

(Witness excused.)

C. C. SPICER,

a witness called on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is C. C. Spicer, and I am principally in the oil business, and am President of the Republic Oil Company. I know Fred V. Gordon and have known him since 1908 or 1909. I know his reputation in this community for truth, honesty, and integrity, and it is good.

(Testimony of C. C. Spicer)

Cross-Examination

By Mr. Manster:

I do not know anything whatever of his activities in connection with the Plymouth Oil Company or the Union Associated Mines Company.

(Witness excused.)

RAYMOND S. BLATCHLEY,

a witness called on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Raymond S. Blatchley, and I am a consulting oil and gas geologist, and practice in Los Angeles. I know Fred V. Gordon and have known him about 18 years. I know his reputation in this community for honesty, integrity and fair dealing. It is very good.

Cross-Examination

By Mr. Manster:

I do not know anything about Mr. Gordon's con- [222] nection with the Plymouth Oil Company, nor with Union Associated Mines Company.

(Witness excused.)

M. P. WAIT,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is M. P. Wait, and I am a consulting engineer, and practice in Los Angeles. I know Fred V. Gordon and have known him about 50 years, and I know his reputation for truth, honesty and integrity in this community, and it is excellent.

Cross-Examination

By Mr. Manster:

I have never heard anything of the Plymouth Oil Company, organized by Mr. Gordon, nor the Union Associated Mines Company, nor do I know anything about his connection with those companies.

(Witness excused.)

SIDNEY FISCHGRUND,

recalled as a witness on behalf of the Defendants, having been previously duly sworn, testified further as follows:

Cross-Examination

(continued.)

By Mr. Manster:

I have read the testimony that I gave before the Commission Examiner back in 1940, and in answer to the question as to why the Plymouth Oil Company did not proceed to drill the wells and dispose of its own stock, I answered that I must admit it was a very foolish contract, as I look back at it now; and I further testified that it

(Testimony of Sidney Fischgrund)

appears as though a half interest in the well was given for stock that had some value, but [223] not the value that it should have for the stock received. If I had had my way about it, I would like to get the stock that was paid to that company because the one that suffered in the case was the Plymouth Oil Company. It now seems to me as though it was a foolish contract by virtue of what occurred as a result of everything that followed afterward; but if the well had been successful and the well had come in it would have been a very wise contract because the Plymouth Oil Company would have been able to finance two or three wells, by reason of the sale of the stock, and could have drilled the first well and possibly drilled a second well. By doing that the Union Associated Mines Company would have had real assets, they would have had a 50 per cent interest in one well and a 40 per cent in another well, after all expenses were paid, and by doing that we could have created goodwill as far as the Union Associated Mines is concerned, and we could have relied upon them for further financing, and furthermore, the Plymouth Oil Company would have had a 50 per cent—a 30 per cent interest in one well and a 40 per cent in Well No. 2, and by that means it would have had credit and assets of its own. So the whole thing depended upon the production of this oil, and we were very sure that it would have produced oil by virtue of the place where the well was drilled. I believe Gordon and I discussed this contract before it was prepared and executed (Tr. 1332), and I do not believe that I put it to Mr. Gordon to the effect that it was a foolish contract; but I believe Davis, Siens and I were discussing it, because Mr. Gordon was not here very much of the time,

(Testimony of Sidney Fischgrund)

and I believe I did say that this looks like a foolish contract, before it was prepared. I do not remember what Siens and Davis said in answer to that statement, because that was about six years ago. I believe we discussed this contract [224] with Mr. Morgan, but Morgan did not suggest it looked like a foolish contract. It looked like a very wise contract to them, and I believe it was, but it looks foolish for Plymouth because the wells did not come out right. Siens, like a lot of other individuals who were around the office, had no direct authority as far as the Plymouth Oil Company was concerned, but he was around there and engineered many transactions with this company and with other companies. He used the stationery of the Plymouth Oil Company with great liberality and I was in the office, or at least in an adjoining office, at the time. He never did ask me for permission to use the stationery. Those who were interested in working with us in developing an oil company had the privilege of using the Plymouth Oil Company's stationery to write letters. I knew Siens was using some of the stationery. I did not see any of the letters that passed between Siens and Morgan, although I knew that he was writing Morgan and other persons; but I did not protest to him against the use of the stationery; nor did I ask Gordon whether he had given Siens authority to use it.

At this point, it was stipulated between counsel that if Paul Grimm, who was present in Court and stood up in Court, was sworn, he would testify that he was president of the Pacific Western Oil Company, and in the oil business; that he has known Fred Gordon for many, many years in the County of Los Angeles, and that he knows Mr. Gordon's reputation for truth, honesty, and integrity

(Testimony of Sidney Fischgrund)

is good. And it was stipulated further, that if he were asked as to whether he knew anything about Mr. Gordon's connection with the Plymouth Oil Company or the Union Associated Mines Company, he would testify that he did not.

The same stipulation was made as to Mr. Dickey, [225] who is vice-president of the Farmers & Merchants Bank of Los Angeles, and has been acquainted for many, many years with Fred Gordon, and knows of his reputation for truth, honesty, and fair dealing in the community, and that it is good; and also that he would testify, if so sworn, that he did not know of Mr. Gordon's connection with the Plymouth Oil Company or with the Union Associated Mines Company. (Tr. 1336)

(Witness Fischgrund continuing)

Siens also made use of my stationery. I did not know it at the time. He did not ask permission to use it, but I do not think I would have objected if he had taken some of my stationery to write a letter. I did not know that he was writing to Morgan on my stationery, although I knew he was writing to Morgan. I know now that he used my stationery, but I did not know it at the time. The letter of September 6, 1938, signed by Siens and addressed to Morgan, is on my stationery. I do not know why he used my stationery in writing that letter, but I did not reprimand him for it. I did not know about the letter until now. He did not discuss with me the contents of that letter before he wrote it. Apparently my secretary did not write it because it does not bear her initials in the corner, and it is quite evident that Mr. Siens wrote it himself. (Tr. 1338) I have formerly

(Testimony of Sidney Fischgrund)

testified that I was not aware of any negotiations between Adkisson and Barclay or Morgan with respect to raising the market on the stock. I never saw, before this time, the letter of November 28, 1938, which is part of Exhibit No. 14, written on the stationery of the Plymouth Oil Company. That letter does not bear any initials of my secretary, and it apparently was written by Siens himself. I did not discuss the contents of that letter with Mr. Siens, or with Mr. Morgan, or Mr. Gordon. (Tr. 1340) I do not remember any statement made to the Board of Governors [226] of the Salt Lake Stock Exchange in connection with a registration statement; but I do remember assisting Mr. Davis in compiling certain information, as much as I could, in connection with the registration statement to the S. E. C. Such information as I had, such as that having to do with the formation of the company, and which information Mr. Davis did not have, I gave to him. Referring to the letter dated September 14, 1938, in Exhibit 14, signed by Siens and addressed to Morgan, I do know about certain things in that letter, and certain things I do not know. I did not discuss the ideas set out in the first two paragraphs of that letter with Mr. Siens, but perhaps he had in mind the fact that the Union Associated Mines already had a permit and had stock outstanding, while the Plymouth Oil Company had no permit to issue any stock in this State. The statement in that letter, "We know to start with that we have to submit a statement of Union to the Government department," would not necessarily refer to the registration statement filed with the S. E. C. The State of California is a Government department. I do not know what he had in mind, but that may very possibly be what

(Testimony of Sidney Fischgrund)

he had in mind. There were so many things going on in the office. I was trying to take care of my own work, and whenever things would come up, we would discuss them. After six years it is impossible to remember every conversation that took place in the office. I regarded this particular venture at the time as having prospects of profit to me, but it was impossible to take care of everything that was going on in that office, at the same time, without abandoning my own office. I had an investment in the stock of the company of \$500.00. I prepared the contract between Collins and Siens, referring to the sale of the million shares of stock. Collins did not occupy an office in the Plymouth suite. He [227] had an office right across from Mr. Dunnigan for which he paid rent separately. Siens and Collins, however, were talking there almost every day. I discussed with Collins the terms of this contract, Government's Exhibit 25 in evidence, and I noticed that it calls for the sale of a million shares of stock in equal monthly installments ranging from $2\frac{1}{2}\phi$ to 30¢ a share. I discussed with Collins the asset value of the Union Company in this fashion, that every month those wells would be on production, the value of that stock would necessarily increase, and if at the end of the year those wells were producing the same amount that other wells in that territory were when they first brought them in, it would be worth more than 30 cents a share. Therefore, its value was dependent on each month's production. (Tr. 1344) I remember in one letter Siens suggested that it would be better to have three wells producing 100 barrels a day than it would be to have one large well, because the prospects of a large well declining in production are greater than smaller wells on production,

(Testimony of Sidney Fischgrund)

and our plan was to get three steadily flowing wells, and discussed this with Collins who did not know much about the oil business, nor did I, but I had observed that in this area there are wells that have been on production for 20 or 30 years. We were interested in getting enough out of the stock to drill about three wells, and we figured that the wells would cost about \$30,000 apiece. Mr. Lacey had no agreement and was under no obligation to advance money for the drilling. I believe Mr. Collins was experienced in the sale of stock. Dunnigan and I filed an answer in respect to the suit that Collins brought against the Plymouth Company and certain others. The purpose of this contract was to sell the stock through a man who had experience in the sale of stock, in order to get funds with which to drill these three [228] wells. I did not know that Collins hired various salesmen to help him in the distribution of the stock. I had not met Mr. McEvoy until afterwards; until after the agreement was signed. He was in the office several times but I do not remember the specific dates. I met Murphy, but it was my understanding that he was not a salesman, but that he and Collins were together in a sort of joint venture. I do not know of any particular arrangement that Collins had with Murphy and McEvoy, but it was my impression that they were all together in this joint venture. I do not remember now when it was that I discovered that McEvoy and Murphy were selling stock; but I do remember being present at a conversation in the Plymouth office when Collins, and Gordon, and Davis, and Siens were discussing the value of this stock and the production of the well and the dividends that would be paid. I do not recall any prospective investors coming to the office to

(Testimony of Sidney Fischgrund)

purchase stock. I do not recall seeing Hampton until afterwards, when he began to come to my office about once a week trying to get his money back, after the wells had proven that they were not on production any further. I did not meet Dr. Williams. I do not know him. It is difficult to remember the conversations that took place with respect to how much the wells were producing. My memory seems to go back to the time when the well was brought in and where someone was coming in the office and saying something like to the effect that the well was producing 250 barrels a day, and would do better after it had been clean out; and then some one else would say that the well was producing 200 barrels. When all of this conversation was taking place about the production of the well. I do not think the pumpers' reports were there; but if they were I think they were figured in inches, and I tried once to figure them out in inches. I could not figure it out. (Tr. 1350) In connection [229] with the Collins contract, it was our plan that each month as the production of the well came in, it would be easy to appreciate or to realize the value of the stock would enhance in value every month. At first it was only on the basis of 1 cent a month, and then afterward 1 cent a share. In other words, it was our intention and purpose that if at any month Mr. Collins decided he did not want to proceed with the purchase of the stock, he could drop the contract and he would be released from his obligation. The contract was the means by which we would obtain funds with which to sell the stock and drill these wells. It was not for the purpose of raising the market price of the stock. He could have dropped that contract immediately. He sold stock under the contract at the price that it was worth

(Testimony of Sidney Fischgrund)

when he sold it. I knew that Mr. Morgan was secretary of the Union Company. He was down here a couple of times. I do not know at whose suggestion he became secretary, but I assume it was at the suggestion of the board of directors. (Tr. 1353) I do not remember discussing with Siens about Morgan's becoming secretary and treasurer of the Union Company. I know that Bray became president of that company. I believe there was some discussion in the office about his becoming president of Union Associated. He is a man of fine reputation and they wanted someone who knew something about the oil business up there. I believe Bray was paid various sums of money by checks drawn by the Plymouth Oil Company and signed by me and by Guy Davis. My signature appears on the seven checks which you show me, commencing with October 7, 1938, and extending to December 22, 1938. They are payable to Mr. Bray. Bray had done a lot of work in helping me out in one field and I don't know but what some of these checks may have been for work that he had done in con- [230] nection with the Plymouth Oil Company. I knew he spent several days with me out in the Carmelita getting leases, and I think he did other work. I do not know what the checks were for. There was no connection between the Union and Plymouth Companies so far as actions by their respective boards of directors were concerned, except as it has been related here. I know of a splitting arrangement between Collins and Siens with respect to profits to be made on the contract. (Tr. 1357) After the agreement was made, Siens and Collins apparently had some agreement whereby they would benefit by any increase in the value of the stock; in other words, if they sold it for

(Testimony of Sidney Fischgrund)

more than the contract provided, Collins, Siens, McEvoy and Murphy were to get a certain amount of the profit. But this was after the agreement was prepared, and was an arrangement among themselves. Afterwards this splitting arrangement was incorporated into a formal contract which I believe I prepared, but it is pretty hard for me to remember. I have heard some testimony here with respect to the lease that Gordon executed to Millener and that Millener executed to the Union. I believe we prepared the lease in the office, that is, the lease from Gordon to Millener, but I do not remember anything further.

Re-Direct Examination

By Mr. Blue:

I did not at any time state to Mr. McEvoy, and at no time in my presence was any statement made to the effect that the production of Plymouth Well No. 1 was 350 barrels.

(Witness excused.)

GUY B. DAVIS,

a witness called by and on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination [231]

By Mr. Blue:

My name is Guy B. Davis, and I am named in this indictment as one of the co-conspirators; but I have not been indicted. I am an accountant and secretary-treasurer of Plymouth Oil Company, and have been since its organization in 1938; and as such have been in charge of the books and records of the Plymouth Oil Company.

(Testimony of Guy B. Davis)

Those books are in the hands of the prosecution. I was subpoenaed to appear here by the Government, and as a witness for the Government but I was not asked to appear in court. In this subpoena I was asked to bring with me all of the books and records of the Plymouth Company, including pumping reports, copies of reports given to the Division of Oil & Gas, and the minutes of the corporation. I have given a statement to the Securities and Exchange Commission over a period of years, at three or four different times. Prior to my association with Plymouth Oil Company I was chief accountant for the Richfield Oil Company for about 9 years. I have been doing accounting work all of my life. During the last 15 years I have specialized in oil accounting. (Tr. 1361) While I was with the Plymouth Oil Company I took care of the field work involved in checking over the wells while drilling and after the wells became producers. I supervised the drilling and the production. I have seen the report embodied in Plaintiff's Exhibit 40 in evidence, consisting on pumpers' report on Plymouth Well No. 1, on Plymouth Well No. 2, and the third document being a gauge to determine the barrelage in the tanks. I delivered these very reports to Mr. Evans and to Mr. Manster. The first report that appears in that particular file, Exhibit 40 in evidence, is as of December 15, 1938. The well did not come in on that date, but it was brought in on December 14, 1938, but the pumpers' report for December 14 is not there because the well was not [232] turned over to the pumper until the 15th; it was still in charge of the drilling crew until it was turned into the tanks and cleaned up. I was there shortly after the well came in. It was less than an hour after the

(Testimony of Guy B. Davis)

well came in and it was flowing by heads. That is, it surges out and quiets down and surges again. In my oil experience I have at times been present when completions of wells were made and saw oil coming out of the well for the first time. I discussed with the operator or someone at the well my belief as to the production of that particular well; and I expressed my opinion to Bryan, the superintendent, that it looked like a 225 or 250 barrel well; and Bryan agreed with me, but he thought maybe it was a little more than that. I imagine I was there an hour or so and then came back to town, and I told certain members of the Plymouth Company in the office as to my conclusion as to the initial production of the well, and told them it was about 225 to 250 barrels, according to my estimate. The gross number of barrels produced by Plymouth Well No. 1, from the time it was brought in to December 31, 1938, was 2045.4 barrels, according to Exhibit 40 (Tr. 1367), and I believe I notified the Union Associated Mines Company as to the total of that production. I never told anybody that in my opinion Well No. 1 did 350 barrels a day, and I never heard anyone say that. I did not tell anybody, with reference to No. 2 well, that it came in for 500 barrels, or 550 barrels and was capable of doing 1,000 barrels a day; and I do not remember ever hearing any of the defendants make such a statement; nor did I hear Mr. Siens, Mr. Adkisson, nor Barclay say that. I never did hear Adkisson or Siens make any statements with respect to the production of the well. Plymouth Oil Company completed Well No. 1 and Well No. 2, and that company drilled a third well in the Torrance Field. [233] I know Mr. Schirm, but he was not employed by the Plymouth Company, and as far as I

(Testimony of Guy B. Davis)

was concerned, he never got a five cent piece from that company. I would not say definitely when I last saw him in the office of the Plymouth Company. I heard about an argument that he had with Siens, and after that Schirm was never in the Plymouth office very often, if ever. (Tr. 1370) In taking care of the books and records of the Plymouth Company I never at any time did anything or made any entry in those books that was not correct. Nor did I ever make any untrue statement to anyone. Fischgrund, Gordon and I were directors of that Company, and still are. I never heard Fischgrund or Gordon say anything in reference to the business of the Plymouth Company that was not true; and I never did enter into any conspiracy to defraud anybody or to commit any act to violate the Mail Fraud Statute or the Securities Exchange Act. Gordon nor Fischgrund never drew any salaries, and Fischgrund never drew any money for legal services. I became associated with Plymouth in August, 1938, and first began to receive a salary sometime in 1939, after well No. 1 came on production. I then received \$200.00 a month, and outside of that compensation I received nothing. I own 20 per cent of the Plymouth Oil Company.

Cross-Examination

By Mr. Manster:

I am not employed by Mr. Gordon, although my office is in the same suite with him. I do accounting work for some of the companies which he is president of, and receive remuneration for that from those companies. I regard Gordon as a fairly profitable account, as far as his connections are concerned. I do some work for Roy

(Testimony of Guy B. Davis)

Lacey, and get paid for that. My estimate of the well as it was flowing by heads was 225 barrels. The report filed with the Oil & Gas [234] Division shows that the initial production of that well was 124 barrels per day, as of December 14, 1938. I prepared that information in the report and filed it with the State Division of Oil & Gas. My estimate of 225 barrels a day was the day before December 14. No, I mean it was made on December 14. In explaining how it is that I estimated it was producing 225 barrels, and the report showed an initial production of 124 barrels, I would say that the report was filed and dated December 26, 1939, or about nine months after the well started to produce; and the figures shown on there are no doubt the average clean oil produced, maybe, for the first month.

Q. Well, I am asking you to explain this difference of about 100 barrels.

Mr. Cannon: I submit he has already answered. It is an average and the average figured out of 124 barrels a day as shown by that report for 17 days, and at the end of the month that is 2,008 barrels.

Mr. Manster: Well, that is Mr. Cannon's interpretation of the witness' testimony. I will object to any comment. He is a very astute lawyer.

Mr. Cannon: Thank you. (Tr. 1375-1376)

(Witness continuing)

There is nothing in the report as filed that shows it was the average, but the report itself shows it was rather hazardous to estimate the production of a well which flows by heads, and there is bound to be a difference. I became a director and officer of the Plymouth Company at the suggestion of Gordon and Dunnigan.

(Testimony of Guy B. Davis)

Re-Direct Examination

By Mr. Blue:

“Clean oil” is oil with less than one per cent [235] impurities of mud, emulsion, water, and sand.

Re-Cross Examination

By Mr. Manster:

This report, Exhibit No. 41, with reference to the initial production of Well No. 2 shows that the well finally developed 30 to 40 per cent wet.

(Witness excused.)

JOHN H. MORGAN,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cannon:

My name is John H. Morgan, and I am 50 years of age, and live in Salt Lake City, and I have a family consisting of three girls and two boys. I am a lawyer and sometimes referred to as “Judge Morgan” because I was for sometime a Judge on the Municipal Court bench in Salt Lake. After my term as such Judge I retired to private practice, and I am still so engaged in Salt Lake. I first met Gordon about 1926, when he came to purchase the LaBarge Field from the Scoffields. It was quite an important deal, some five million dollars, and I knew Gordon at that time. I remember Gordon very well because of the importance of the deal, and Gordon was handling it. That was about 1926. Gordon had with him a million dollar cashier’s check and it was an important fact

(Testimony of John H. Morgan)

as far as we natives were concerned. (Tr. 1380) I met him again in the fall of 1938, after Siens and Adkisson had been in Salt Lake. The Plymouth-Union deal first came to my attention through a letter that had been written to me by Schirm in which he said that Preston had informed him that Union Associated was a Utah Corporation and had certain outstanding stock, and had formerly been listed on the Stock Ex- [236] change, and Schirm asked me to check on it. I did through Mr. Clayton, because Clayton was familiar with the company and I got information from him that the Perri family owned approximately 200,000 shares of this stock, and that there was outstanding about 740 or 750 thousand shares of it. (Tr. 1381) The information with respect to the existence of the Union Associated Mines Company came to me from Schirm. Then Clayton contacted the Perri family because he had known Mr. Perri who had been manager of the company. Clayton had an option agreement for the purchase of 200,000 shares of the stock for \$800.00. as testified by Mr. Adkisson, and \$800.00 was paid to the Bank for the stock. Thereafter I drafted the minutes of the stockholders and directors of the Union Associated Mines Company, which minutes have been offered and received in evidence. From time to time thereafter. I conducted correspondence with Siens and other persons as reflected in the exhibits, in evidence. I tried to answer all correspondence that was sent to me. I voluntarily delivered to the Securities and Exchange Commission all the books, papers, and correspondence that have been offered and received in evidence. They were in my office a number of times, and I turned all of my files and records over to them without any subpoena, and I

(Testimony of John H. Morgan)

did not make any extractions from those files, but they and I went over everything together, and I gave them everything they wanted. I never attempted to conceal or hide anything from them, and I have had several interviews with them. I discussed this proposed transaction between Plymouth and Union with the Securities Exchange officers in Utah; Mr. Gull who was the director at that time. I laid the plan before him and I discussed it in detail, and he requested me to write a letter outlining it, and I did so, and that letter is offered in evidence. I remember a letter in evidence written by Mr. Vrang, setting forth the plan for [237] the building up of an oil company and drilling of wells. I take that letter as being the practical beginning of a deal between Union Associated and Plymouth. I can see nothing wrong with that deal. I knew Vrang was a geologist, a graduate of Stanford, and that he had taught there, and had done a lot of preliminary work in Wyoming, and was one of the discoverers of the LaBarge Field. I knew him very well by reputation. I then received a letter from Mr. Gull of the Securities and Exchange Commission of Utah, and transmitted that information to the people in Los Angeles. From time to time I held conferences with Adkisson, Siens, and I saw Gordon once in Salt Lake as he was on his way, coming in to Salt Lake from Texas, but there was not much discussion with Gordon concerning Union Associated. I drew the papers set up on Form 10 concerning the re-listing of the stock on the Salt Lake Stock Exchange, but Mr. Orton was the accountant who prepared them. He is an accountant of good reputation in Salt Lake, and I got the information from Mr. Snow that he was a good man to make up the Form 10. In making up the form

(Testimony of John H. Morgan) -

for the listing of the stock on the Salt Lake Exchange, I did not conceal or intend to conceal any facts. I do not think any fact was ever concealed. From time to time I appeared before the listing committee of that Exchange. I knew Barclay and have known him for a long time. He had been president of the Salt Lake Exchange for a good many years before his death, and was a man of good reputation. I was admitted to practice law in 1922. I made two or three trips to Los Angeles. I came down once or twice before the well came on production. I think, but I cannot be sure. I knew nothing of the productivity of the Torrance Field. I got my information from telegrams and letters as to how the well was going down, the production, and things of that nature. (Tr. 1389) I relied upon that in- [238] formation. I was once in Los Angeles and talked with Mr. Soyster, an oil engineer and geologist, and I also talked with Vrang in regard to the production of that field. Vrang is now a major in the Army, in Arizona. I do not know where Soyster is. As I now remember it, and as I consider the letter which has been read in evidence, with respect to the acquisition of leases or lands by Union as contra-distinguished from having only a contract under which the Union was to purchase a well drilled by Plymouth, I would say, as I recall it, there were a number of stockholders who thought Union Associated should acquire it, and that it would look better for Union Associated to acquire an interest in land, in the lease itself, rather than merely an interest in a well. And I wrote that letter to Mr. Gordon or Siens about it. The reason I mentioned the S. E. C. in that letter was that the report had already been made to the Securities Exchange Commission, and

(Testimony of John H. Morgan)

it was my understanding that these reports go to the S. E. C., and in that letter some reference was made by me about nondisclosure of that to the Securities Exchange Commission. That was because it had already been made known in the application for a ruling from the Securities & Exchange Commission, as to the entire plan of the Union Associated. There was not any desire on my part or any intention to conceal any of the transactions from any person. Following up the suggestion that I had made in the correspondence regarding the acquisition of lands or leases by Union Associated, I later took the matter up with Mr. Ellis concerning the lease at Devil's Den area. Gordon had told me that since it was his own property he would rather not try to pass on it himself, and for me to make an independent investigation. So, I went to San Francisco and saw Ellis, and he went into the thing very thoroughly and had his maps and logs and everything connected with it, [239] and was very much enthused about the area himself, and told me his company had spent around \$70,000, and were willing to spend another \$70,000 as they felt they could develop a field there. I saw Ralph Arnold's report, and he had passed very favorably upon the area, and I thought the Union Associated was making a good deal if they could get that 40 acres at Devil's Den, and I still think so. I made the trip to San Francisco from Los Angeles specifically to get information, and after that information was obtained I took the matter up with the board of directors in Salt Lake City of the Union Associated. Truman has been with the Union Associated from the beginning. Bray was the only other director along with me. Brown came in later, after Weeks had gone out of the picture.

(Testimony of John H. Morgan)

Weeks is a man of excellent reputation, and a construction engineer for the Southern Pacific. Brown is also a man of good reputation. They were officers and directors of the Company—Union Associated Mines. I have never concealed any of the facts pertinent to any of the matters discussed in any of the circular letters that I prepared, or assisted in preparing, and made no false representation to any one at any time. I bought 15,000 or 20,000 shares of Union Associated stock through Snow, a broker in Salt Lake, who is secretary of the Exchange, and paid the then going price for the stock and a commission. I bought the stock because I thought it was a good buy, and I still have that stock, although I did have to sell a few thousand shares of the stock that I got for my work in the company. Union Associated gave me, as is reflected in the minutes, 15,000 shares of stock for legal services, and I sold some of that stock, I would say between 4,000 and 5,000, or maybe 6,000 shares, at times when I have had to have some money, and I let some of my stock go; but I did not sell it for any other reason other than the fact that I had to [240] have some money at the time. I bought five or six times as much stock as I ever sold. I believe I bought altogether more than 30,000 shares, and bought it as an investment. (Tr. 1397) It seemed to me that the brokers were always knocking the price of the stock down, and I thought the stock ought to be at least 5 cents a share. The written reports definitely showed that the production expected

(Testimony of John H. Morgan)

down on the Torrance Field was about 150,000 barrels per acre; Soyster's report on Lot 41, indicates that. The expectation was that these wells would produce approximately 150,000 barrels per acre. As explained to me, the location of the Plymouth Well would allow at least 2 acres of drainage for each of those wells, and we were getting a full overriding royalty of 50 per cent of the first well, and if the stock was 5 cents, the 1,400,000 shares that were outstanding would be worth \$70,000, and we would get a whole lot more than that from the production of that first well. My interest in seeing the stock rise on the market was that we were drilling wells, and we needed money to drill them. If we had gotten a fair price for the stock all of the burden of that drilling would not have been thrown on Lacey. They only took in about \$11,000 or \$12,000 from the sale of stock, and were spending about \$80,000 for drilling those two wells. (Tr. 1399) As far as I know, it was the intention to repay Lacy progressively, as money would come into the Plymouth hands. Gordon was backing part of the notes to Lacy by his personal endorsement, according to the information I had received from Siens and Gordon. The letter on a letterhead of Merwin H. Soyster, Petroleum Engineer and Geologist, dated January 2, 1939, was received by me on or about the date it bears, and I relied on statements therein made.

(The document referred to was marked Defendants' Exhibit P. and received in evidence.) [241]

(Witness temporarily excused.)

OLIVER O. CLARK,

a witness called by and on behalf of the Defendants,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Cannon:

My name is Oliver O. Clark, and I live in LaCanada, practice law in Los Angeles and elsewhere, and have been a member of the California Bar since July, 1907. I know Sidney Fischgrund and know his general reputation in this community for truth, honesty, veracity, and fair dealing, and it is good.

(Witness excused.)

WILLIAM R. LAW,

a witness called by and one behalf of the Defendants,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Cannon:

My name is William R. Law, and I am an attorney at law, practicing in Los Angeles, and live in South Pasadena. I know Sidney Fischgrund and know his general reputation in this community for truth, honesty, and fair dealing, and it is good.

(Witness excused.)

FREDERICK M. BLOW,

a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cannon:

My name is Frederick M. Blow, and my business is investment supervision, on my own account. I was formerly connected with the Westclox manufacturers, but I was never a director. (Tr. 1403) I know James M. Collins and know his [242] general reputation for truth, honesty and veracity in the community in which he lives. It is excellent.

Cross-Examination

By Mr. Manster:

I do not know anything about Mr. Collins' activities with the Union Associated Mines Company stock, nor anything about his connection with the Plymouth Oil Company.

(Witness excused.)

WALTER I. LYON,

a witness called by and on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Walter I. Lyon. I am an attorney at law, practicing in Los Angeles. I know Christopher E. Schirm, and have known him since about 1928 or 1929. His reputation in this community for truth, honesty, and fair dealing is very good.

(Witness excused.)

JOHN H. MORGAN,

a defendant herein, called by and on behalf of the Defendants, resumed the stand and testified further as follows:

Direct Examination

(continued.)

(At this point, Mr. Cannon read Defendants' Exhibit P, which is as follows:) [243]

[DEFENDANTS' EXHIBIT P]

MERWIN H. SOYSTER

Petroleum Engineer and Geologist
4321 Clinton St. Los Angeles
ROchester 2446

January 2, 1939.

Mr. J. H. Morgan,
Utah Oil Building,
Salt Lake City, Utah.

Dear Sir:

At the request of Mr. Chris. Schirm I am giving you herewith my opinion of the oil possibilities of Lot 41, Tract 437, Torrance Oil Field, Los Angeles County, California.

This lot, which is one acre in area, is located in the heart of recent deep zone development in the Torrance Oil Field. A well drilled thereon will encounter the top of the oil sand at 4820 feet, which sand will continue to a depth of 5150 feet. The initial production will approximate 600-700 barrels per day of 27° gravity clean oil. The cost of drilling and placing on production will ap-

(Defendants' Exhibit P)

proximate \$35,000-\$40,000, and should be completed in 45 days.

I have acted as Petroleum Engineer for the Plymouth Oil Company and the Logan Petroleum Company in this area and am thoroughly familiar with its development.

At the present time Logan Petroleum Company's well No. 1, located directly across the street from Lot 41, is standing cemented above 240 feet of well saturated oil sand. This well should be completed the latter part of this week, and it is my opinion that the initial production will approximate 600 to 700 barrels per day, of clean oil.

Located 300 feet easterly from Lot 41 a well was recently completed by Felix Mallon. The records of this well are as follows:

Total depth 5150 feet.

Water shut off with 7" casing cemented at 4924 feet.

260 feet of 5", including 245 feet of perforated, landed at 5150 feet.

2½" tubing at 4961 feet with packer at 4911 feet.

Completed December 10, 1938.

Initial production 700 bbls. daily, 27.0° gravity, 1.0% cut.

Production as of December 30th was 580 barrels, 27.0° gravity, 1.0% cut.

Another well, Ray Wilton No. 2, located approximately 500 feet north of Lot 41, was drilled to a depth of 5152 feet. This well was perforated between 4820 and 5150 feet. Completed December 27, 1938. Initial production 650 barrels of clean oil.

(Defendants' Exhibit P)

In my opinion Lot 41 is located very favorably in respect to the geologic structure. The initial production of a well drilled thereon should

Mr. J. H. Morgan, -2- January 2, 1939.

approximate 600-700 barrels daily production of 26-27° gravity clean oil, the market price of which is now \$1.05 per barrel. Ultimate production from the well should be 150,000-175,000 barrels of oil during a life of 12-15 years.

Trusting that this information is what you desire, I remain,

Very truly yours,

(Seal)

M. H. Soyster
Petroleum Engineer & Geologist.

MHS-M

[Endorsed]: Case No. 15229. U. S. A. vs. Collins et al. Defts. Exhibit P in Evidence. Date Jul. 20, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Witness continuing)

I understand Mr. Soyster is in the Army now. I understood that he was formerly with the United States Geodetic Survey. (Tr. 1408) I did not get any money out of this entire enterprise. I lost money. I was never paid any salary by Union Associated or by Plymouth. Union Associated used part of my office, and used my stenographer. and \$30.00 a month was paid for office rent

(Testimony of John H. Morgan)

and stenographic work over a period of 10 months. That \$30.00 included also telephone service. The only other emoluments I got from this deal was 15,000 shares of stock on the first deal, and 10,000 shares, I think, on the second. I did not at any time enter into any conspiracy to defraud any person at any time. I did not think there was ever any such scheme to defraud any person at any time. I did not think there was ever any such scheme as described in this indictment.

Cross-Examination

By Mr. Manster :

When Adkisson and Siens came to Salt Lake in August, 1938, I believe the plan was developed to buy this 200,000 share block of stock, but before Adkisson and Siens came to Salt Lake I had been corresponding with Schirm and Vrang with reference to the acquisition of a Utah corporation. Referring to a letter dated July 29, 1938, contained in Government's Exhibit 15, I might say that just before this letter I was in Los Angeles in Vrang's office with Gordon, and there had been some discussion about acquiring a Utah corporation; but that was not in relation to the Plymouth-Union deal at all. It was another matter that Vrang and Schirm had in mind themselves, not with the Union Associated deal. Vrang's outline with respect to drilling an oil well in Torrance was not connected with the Plymouth-Union deal at all. Adkisson and Siens came [244] to Salt Lake to see me about August, 1938. In my correspondence with Schirm and Vrang and Siens, it was proposed to acquire a Utah company that had a lot of treasury stock and had been listed on the Salt Lake Exchange, and a company whose

(Testimony of John H. Morgan)

outstanding stock could be purchased cheaply; and that is what actually happened in the case of Union Associated Clayton had the option for the 200,000 shares for \$800.00, and that deal was consummated. At that time I knew the outstanding stock of Union Associated, and if my recollection is right it was a 3,000,000 share corporation, and there were approximately 740,000 shares outstanding, and the balance would be in the treasury. In the letter of July 29, Government's Exhibit 15, where it said "we could use to move some stock" means to sell the stock. That letter does not indicate any intention to raise the price of the stock. I think Siens and Adkisson visited me in Salt Lake as representatives of the Plymouth group. I discussed the general terms of these proposed contracts for the exchange of stock and the interests in the wells. I do not recall any conversation held as to why Plymouth Company, which had been organized to acquire leaseholds and drill them, did not sell its own stock. Under the contract, Union Company had no obligation in connection with the drilling of this well, and, using the vernacular, they were getting gravy out of this contract. Referring to letter of October 10, 1938, addressed by me to Siens, where reference is made to the acquisition of land or leases by Union Associated, I would explain that the board of directors, and a number of the stockholders, both the new and the old ones, were interested and thought it would be better for Union Associated to acquire an interest in the leases themselves, just like they did in the Devil's Den Field, and the leases in Wyoming, rather than to acquire just an interest in the well. And looking back at it, I did not think it was [245] a bad idea. I talked with both Gordon and Ellis

(Testimony of John H. Morgan)

in connection with the Union acquisition of the 40-acre lease at Devil's Den, and as to why Gordon did not convey that directly to the Union instead of first conveying it to Millener, I would say that that is a tempest in a teapot, because Gordon was president of Plymouth, and as a matter of convenience he made it to Millener and turned it to the Union Associated. But I do not see anything wrong with it. Referring to the letter of January 17, 1939, addressed by me to Siens, in explanation of the second paragraph I would say that the day before this letter was written the Listing Committee of the Salt Lake Stock Exchange met and invited me to that Committee; and one of the Hogle's men had questioned as to whether or not there were any wash sales, and had said that if there were any wash sales a stop order from the Salt Lake Stock Exchange would be issued.

(At this point, Mr. Manster read from the registration statement, Government's Exhibit 7, the following telegram addressed to Andrew J. Cavanaugh, Assistant Director, Registration Division, S. E. C., dated February 21, 1939:)

"Agreeable to your request we withdraw Union Associated Mines certification of registration pending further investigation stop. Will notify company.

"Val S Snow, Secretary,
"Salt Lake Stock Exchange."

(Witness continuing)

(Tr. 1423)

Subsequent to that, an order of investigation came through from the Securities and Exchange Commission. Clayton introduced Adkisson to Barclay because Adkisson wanted to get acquainted with brokers in Salt

(Testimony of John H. Morgan)

Lake, to help sell the stock. Drilling operations had not been commenced on Well No. 1. I do not know what, if any, arrangements Adkisson made to forward drilling reports to the Salt Lake Exchange for posting. I was never present at any meeting where that was discussed. I know wires were sent to the Salt Lake Exchange, but the idea did not originate with me at all. Snow had told me that some of the brokers did not think it looked right for wires to be coming daily to the Exchange, so I wrote Siens the letter of December 12, 1938, telling him what the reaction was. I remember Collins saw me in Salt Lake about January, 1939, but he did not mention any contract he had with Plymouth for the purchase of stock. I learned about that sometime after. Collins, when he first came to Salt Lake, asked me about the stock set up, and he visited me for only a very few minutes, and then went down and talked to Val Snow. I was not with Barclay on his visit to the Plymouth office in Los Angeles. When I visited the Plymouth office in Los Angeles, I think I heard about the Collins contract for the first time.

Re-Direct Examination

By Mr. Cannon:

I recall the printed letter of January 6, 1939, sent to the stockholders, having to do with the 2,000 barrels of oil produced from Well No. 1 between the date of its coming in and the end of December, 1938. That letter went

(Testimony of John H. Morgan)

to all stockholders of record, and to all the brokers, and a bunch of them went to the Plymouth office in Los Angeles. They were widely distributed.

Re-Cross Examination

By Mr. Manster:

When the letter of October 14, 1938, addressed by me to Mr. Siens was written, I felt that the market was too low and that the stock should be at 5 cents. I brought attention to the Soyster letter for my reason for thinking it should be 5 cents. I thought the market was being knocked down all [247] the time by Barclay selling there in Salt Lake, because the other brokers knew that Barclay was representing the California brokers; and I did not think the public interest in the stock was active enough in the face of the prospective production from Plymouth Well No. 1, and I do not think the public ever realized the value of the stock.

Re-Direct Examination

By Mr. Cannon:

I knew that when Plymouth Oil Company sold the stock at a higher price there was more money available for further development.

(Witness excused.)

(At this point, Mr. Cannon read a letter addressed to Morgan, dated July 31, 1938, beginning "Dear Judge: Yours of the 29th instant," etc., etc.)

CHRISTION VRANG

Geologist

612 Subway Terminal Bldg.,
Los Angeles, Calif.

July 31, 1938

Torrance-Lomita Field,
Los Angeles Basin, Calif.

J. H. Morgan, Esq.,
526 Utah Oil Building,
Salt Lake City, Utah.

Dear Judge:—

Yours of the 29th. inst., was received by both Schirm and myself yesterday.

There is nothing available in the "hot spot" in the Torrance-Lomita field at a bargain anymore. Since the completion of a 1,500 barrel well southerly and southeasterly from the former completions, the day before yesterday, we look for stiffer competition than ever. All good acre lots call for a bonus of not less than \$1,500.00 bonus and 20% royalty. Deals have involved as much as \$2,000.00 an acre bonus and 25% royalty, and money can be made upon those terms, too.

I am enclosing herewith a schedule "A" which should give you a comprehensive picture of how we are able to finance the drilling of a well. We are going ahead on one well on the basis outlined in Schedule "A". Mr. Gordon and his son-in-law, R. R. McLachlen have in mind a property that we are looking at today in Torrance which may suit you. If it can be had on workable terms will advise.

There is no chance of losing in the present area as long as one secures a site on structure south and Southeast of the old Torrance Field, limited, of course, by the width and length of the structure.

Would suggest that you party be ready to fly here the minute we are able to tie-up (option) a suitable piece of land. \$1,500.00 to \$2,000. will be needed to place the deal in escrow in a Torrance bank. It takes three weeks to pass the Title people. Thereafter, about \$15,000.00 will be required to drill the well in. After the hypothecated percents are returned the company will enjoy a large income, as you will see from the enclosed schedule.

I know what you require in the way of press notices and maps which we will send to you as soon as we are able to get them.

I note what you say about the Coalinga area. The recent Petroleum Securities (an E. L. Doheny company) well is good for 20,000 barrels. Geologists now predict the Coalinga district to be another East Texas oil pool at greater depth,—at the depth where the recent new sand was struck. No doubt the Bullion Mines Co. have some producing acreage in Coalinga which might net them a great fortune.

Will write again tomorrow. With best wishes,

Christion Vrang.

Christion Vrang.

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibit No. 38. In the Matter of Union Ass'd. Date 11-7-40. Witness Gordon. Electreporter, Inc., Official Reporters. By Middleton.

(By and with consent of the Court, and of counsel, it was stipulated that if David H. Cannon were sworn and testified, he would testify that he is a member of the bar of Utah, and of California, and has known the defendant, John H. Morgan, in the community in which he resides in Utah, ever since before Morgan began the practice of law, and that his reputation in that community is good in spite of the return of this indictment. (Tr. 1436).)

THOMAS S. BUNN,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination [248]

By Mr. Blue:

My name is Thomas H. Bunn and I am a lawyer, practicing in Los Angeles and have been such for more than 21 years. I know Sidney Fischgrund, and I have known him since the early part of 1934. His reputation for truth, honesty, and fair dealing in this community is excellent.

(Witness excused.)

FRED V. GORDON,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Fred V. Gordon. I am 70 years old, was born in Missouri, and have lived in California since 1880. California has been my home since that time, except for about three years while I was over in the Philippine

(Testimony of Fred V. Gordon)

Islands in the Spanish-American War. Then I was in Kern County for about 4 years. I served in the Philippines from 1898 to 1900, under General MacArthur. When I returned to California I worked for railroad companies as a telegraph operator; and then went into the oil business, about 1902, and have been in the oil business ever since, having interests in Wyoming, Nebraska, Texas, Illinois, Mexico, Venezuela, and California. (Tr. 1440) That has been my exclusive business since that time. I was vice-president of California Petroleum Company, one of the largest independent companies in California, and I have been with the Republic Petroleum Company, Oceanic Oil Company, Los Cal Petroleum Company, Oil Royalties Corporation, and have been a director of several of them. I am president of Plymouth Oil Company. California Petroleum Company is the one that was sold out to the Texas Company in 1930. I have been president of the Plymouth Oil Company since its organi- [249] zation; Fischgrund has been vice-president, and Guy B. Davis, secretary-treasurer. There has been no change in the directorate since its organization. I have never knowingly done one single thing that was wrong, illegal or unethical in connection with that company or with any other company, and I have never gotten one 5 cent piece for any of the services that I have rendered the Plymouth Oil Company. I have indebted myself for the development work of that company for one-half of the expenditures, my indebtedness in connection therewith being about \$48,000. I acquired the property in the Devil's Den area in 1929, and paid \$15,000 for it in fee, because I thought it was cheap and it was oil land. I, with others, executed a lease to

(Testimony of Fred V. Gordon)

Millener, covering 40 acres of that land. Morgan had come into my office and told me that he was very anxious to get hold of some properties for his Union Associated Mines Company, and he had been working with Mr. Schirm in connection with some properties in Montebello. Morgan asked me about the Devil's Den property, and asked for a lease on it, but I told him to make his own independent investigation because I was the president of the Plymouth Oil Company and did not want to tell him anything about that Devil's Den property. He went to San Francisco and talked with Mr. Ellis about it, and returned and told me that Ellis' report was favorable. I was about ready to go to Texas or Nebraska, and I told him to take the other lease that I had on that property, and make up a lease like it, except that I wanted him to pay 6/6ths of the taxes (Tr. 1444) instead of 5/6ths because I was trying to make the land self-supporting. Someone phoned over to me and said that he would like to have the lease made in the name of Millener. I did not know who Millener was, but they told me it was all right with the Mines Company. So, I signed the lease after it was drawn, and my wife did so, too. Neither [250] I nor my wife, nor anyone else on that lease, ever received anything in the shape of money or stock or consideration for the lease, and I got no part of the 235,000 shares. (Tr. 1445) I know Mr. Collins. I first met him in February, 1944, after I was indicted, and I had never met him before, although I had heard of him. From September, 1938, until December 19, 1938, I was either in Nebraska or Texas, taking care of properties that I had there; and I would say that during the months of September, October, and November, and up to the

(Testimony of Fred V. Gordon)

17th of December, I was in Los Angeles not more than 10% of the time. I was in Los Angeles from December 17 to the first of January, 1939, when I went to Abilene, Texas, and then up to Iowa. I bought some Union Associated stock in this manner: Miss McLean was a nurse who took care of me in New York and she had been asking me if I could buy her some leases on which she could make some money, but I told her those in Nebraska were too speculative. She kept calling me up and wanted to know if I wouldn't tell her about something that she could make a little money on. So, when the Plymouth deal came up I told her if she wanted to put a little money in it, I would guarantee her against loss. I guaranteed her and the other three women who bought 40,000 shares of stock, against loss. At another time Adkisson, who had been owing me \$750 on some stock I had given him to hold for me and which I afterwards let him keep the proceeds from, told me that the only way he could pay me this \$750 was to deliver to me 20,000 shares of Union Associated stock for the \$750. which he did. I still have the stock, in the name of Lucretia J. Dean. I never entered into any conspiracy to cheat or defraud anyone in connection with this or any other deal.

Cross-Examination

By Mr. Evans: [251]

In connection with the Millener lease, I gave the old lease to Mr. Morgan and asked him to draw up a lease, and for some reason or other they made it out in Millener's name, who I understood was the agent for Union Associated. I received no consideration for it. Of course, had the lease been made directly by me to Union,

(Testimony of Fred V. Gordon)

I would have received whatever consideration was paid on the lease, but by making the lease to Millener, and then Millener making the lease to the Union, that step meant that I received no part of the consideration. (Tr. 1449) I never at any time discussed the terms of the lease with Mr. Millener. I never met him but one time. I believe he was a nephew of Mr. Siens. I had known Siens for a period of many years. I met him in connection with the Italo Petroleum Company where we were fellow directors, but I had not seen him for some time because he had been away. Siens never wrote any letters for me in connection with Plymouth Oil Company, although I understand he wrote some letters for the Plymouth Oil Company and for himself. He had no authority to write any letters for me personally. He was the greatest letter writer in the world. Siens was not paid a salary by Plymouth Oil Company; he did not receive any money, to my knowledge. I do not know where he secured funds with which to carry on his various activities in connection with that company. I had quite a number of telephone calls, long distance, during the fall of 1938 and the early part of 1939, and as I recall most of them were from Davis; but some of them were from Siens. I cannot tell you how many. I do not think I received any long distance calls from Fischgrund. I don't remember any. I never had any long distance telephone calls from Dunnigan. And I do not think I received any from Schirm. In the fall of 1938, and the early part of 1939, when I was [252] away from Los Angeles, I do not think that I requested Siens to do anything or perform any acts in connection with the Plymouth-Union deal. Now that you show me a letter ad-

(Testimony of Fred V. Gordon)

dressed by me to Morgan on the stationery of Hughes Petroleum Company, Abilene, Texas, dated January 2, 1939, I remember that I asked Siens to correct certain clauses in the lease, and gave him the names and addresses of the parties so he could get the lease signed. I did not pay much attention to the stock of Union Associated Mines because I was too busy. I did buy back the \$1,500 worth of stock from the ladies in Pasadena, about which I have testified. I later gave McEvoy a letter to one of these ladies. This letter was requested of me by Mr. Siens. Mr. Siens had no authority in the Plymouth Company. I made a deal with Lacy that I was to pay half of whatever it took to drill the first two wells, but I wanted him to advance the money, and I gave him my note for half of it. I do not remember how much it was, exactly, but as I remember, No. 1 well cost about \$38,000, and the No. 2 well cost about the same, or a little more. I still owe my nephew, Mr. Lacy, about \$48,000. During the fall of 1938, the first money for the equipment we bought was paid by Lacy and me, from a supply house, and Lacy and I gave a note for \$15,000 to get that equipment. After that, Lacy put up the money upon my promise to give a note for half of it. I know that Davis would communicate with Lacy whenever more money was needed, while I was away; but Adkisson had no authority to communicate with him. Siens never did communicate with Lacy because Lacy would not talk to him. Lacy never advised me that he would not put up any money if Siens was in the deal, but he advised me not to have anything to do with Siens (Tr. 1459), but I believe that was after he had started putting money into the well. [253]

(Testimony of Fred V. Gordon)

Re-Direct Examination

By Mr. Blue:

I never told Mr. McEvoy that Well No. 1 was producing 350 barrels a day; I never told anyone else that.

(Witness excused.)

HARRY GRAHAM BALTER,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Harry Graham Balter, and I practice law in Los Angeles, and for some years was with the United States District Attorney's office as an attorney in this district. I know Sidney Fischgrund, and have known him between five and ten years; and know his reputation in this community for truth, honesty and fair dealing, and it is good.

(Witness excused.)

LOREN A. BUTTS,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Blue:

My name is Loren A. Butts, and I am an attorney at law, and have practiced for 28 years; in Los Angeles for 14 years. I know Sidney Fischgrund and have known him eight or nine years, and know his reputation in the

(Testimony of Loren A. Butts)

County of Los Angeles for truth, honesty and integrity, and it is good.

(Witness excused.)

Mr. Blue: At this time the defendants Christopher E. Schirm, Sidney Fischgrund, and Fred V. Gordon rest. (Tr. 1463) [254]

Mr. Manster: The Government rests.

* * * * *

Mr. Cannon: At this time the defendants separately and jointly renew the motions heretofore made at the close of the Government's case in chief to strike from the record the different exhibits concerning which motions to strike were heretofore made, and concerning the striking of testimony of various witnesses heretofore made.

Without specifically repeating those particular motions, each of the defendants separately and jointly move for a directed verdict on each and all of the counts of the indictment, making the motions generally to the indictment and to each count thereof.

I will not specifically mention each motion and each count and restate the counts, nor make any argument on the motions or any of them, unless the Court wants me to do so for the purpose of advising the Court of the nature of the motions and the authorities in support thereof.

The Court: Now, all of you join in that motion?

Mr. Blue: We do.

Mr. Fischgrund: We do. (Tr. 1467)

Mr. Morris: We do.

The Court: All right. The motion will be denied.

Mr. Cannon: Exception taken by each of the defendants separately to each denial.

The Court: All right. (Tr. 1468) [255]

Arguments were then made to the jury by the prosecution and by the defense; the Court thereupon instructed the jury and the following occurred:

The Court: Very well. It may be stipulated, I assume, that the jury can take any exhibits they want to into the jury room?

Mr. Cannon: It is so stipulated.

The Court: And, of course, the indictment?

Mr. Cannon: So stipulated.

Mr. Manster: We so stipulate.

Mr. Blue: And the instructions also?

The Court: Well, I deviated from those sometimes. That might not be proper.

Now, we will no longer need our alternate juror. Thank you very much for the attention you have given. You are excused now. Fortunately we did not have to use you.

(The alternate juror was excused.)

The Court: Swear the bailiffs.

(Thereupon, the bailiffs were sworn.)

The Court: You retire in the custody of the bailiff.

(Whereupon, at 11:00 o'clock a. m. the jury retired from the courtroom.)

Whereupon, at 5:15 o'clock p. m. the following proceedings occurred, at first with the jury absent from the courtroom:)

The Court: My purpose in calling you back here, possibly it could have been done over the telephone, is to find out whether it will be agreeable for the jury to return a sealed verdict.

Mr. Cannon: It is agreeable with Mr. Collins and Mr. Morgan. [256]

Mr. Blue: It is agreeable with the defendants I represent.

Mr. Manster: No objection.

The Court: All right, we will call the jury.

(Whereupon, the jury entered the courtroom.)

The Court: Have you agreed on a verdict?

A Juror: Not quite. We are working on it.

The Court: All right, you can work during the evening. In the event you agree on the verdict, you will have it signed by your foreman, as I stated to you this morning, and you will put it in an envelope and seal it and the foreman will keep it in his possession and in the morning you will all return here, at which time the verdict will be opened and read and recorded.

If you have agreed upon a verdict, if you are the foreman, seal it in an envelope and put it in your pocket and then you can all go about your business but you have to return in the morning at 10:00 o'clock.

A Juror: That means we can go home?

The Court: Yes, but you have to be back here at 10:00 in the morning, and at 10:00 in the morning the verdict will be read.

A Juror: I have some questions I would like to ask. Do I have to ask them privately?

The Court: You can ask them now. I don't know whether I will be able to answer them or not.

A Juror: We are kind of confused on the law on some of the counts. It seems to be that we don't know which count is the mail fraud and which count is the conspiracy.

The Court: The last one is the conspiracy.

A Juror: That is No. 7 on here? [257]

The Court: No, No. 11.

A Juror: And the other six—

The Court: 1 and 2 are under the Securities Act and the others are under the Mail Fraud Statute.

A Juror: 1 and 2 is the Securities Act, the next four is the Mail Fraud, and the last one is the conspiracy charge?

The Court: Yes.

A Juror: Would you mind explaining the Mail Fraud to us a little.

The Court: I don't know, I could read all those instructions again to you. That would take about an hour.

Mr. Blue: If the Court please, I would not want to have any uncertainty in the jury's minds as to what the instructions are.

The Court: If it becomes necessary we will do that, but I am not going to do that right now. Later, if you want them, I will read them to you.

A Juror: Later you will?

The Court: Not this evening.

A Juror: We are at liberty to throw out any count we want to?

The Court: Yes, you can find any defendant guilty or not guilty on any count.

A Juror: I am asking a lot of questions that I have been asked to ask. Another question is, we have to agree on all five?

The Court: No, I say you can find any defendant guilty or any defendant not guilty, or all defendants guilty or not guilty on all counts.

A Juror: You understand we might be able to agree on a couple or not a couple or three more. [258]

The Court: I don't know that I want to understand that. I just told you what the instruction was.

A Juror: I think that is clear enough.

The Court: All right. Have you gentlemen anything to add to that?

Mr. Cannon: I don't want to have the jury feel that they should decide the case, having any doubt as to the instructions your Honor gave them.

The Court: This could be read to the jury every day for a week and still they could not remember it.

Mr. Cannon: I quite agree with you on that. I am quite sure that you and the jury have what I have in mind, that we don't want a verdict of conjecture, of course.

The Court: No, certainly not, and I shall, if it becomes necessary, be very glad to re-read those instructions to you.

A Juror: Your Honor, maybe we are just a dumb jury, but we seem to think there are an awful lot of ramifications to this case. It is not as simple as some we have had.

The Court: That is true.

A Juror: I took notes of your instructions to the jury as best I could and they have helped us greatly.

The Court: We might come back here at 8:00 o'clock and the reporter can read them to you.

(Discussion off the record.)

Mr. Manster: Shall we come back at 8:00?

The Court: No, it will not be necessary.

Mr. Manster: We are through until tomorrow morning at 10:00 o'clock?

The Court: Yes. (Tr. 1697-1701) [259]

Mr. Blue: I wish to make a motion, your Honor.

The Court: State your motion.

Mr. Blue: If your Honor please, before the verdict is returned, I wish at this time to move for the withdrawal of a juror and ask for a mistrial, and as a basis for the motion I wish to say as follows: Last night at approximately 5:25 the jury returned to the courtroom; that the foreman of the jury, Mr. Hanson, at that time asked the Court certain questions; the first question, as I recall, was, What was the Mail Fraud Statute?

Mr. Manster: I think I will object to this motion at this time. I think, first of all, it should be made at the bench because it appears to be an effort to influence the jury in the return of the verdict.

Mr. Blue: The verdict is returned and it does not make any difference anyhow. I don't know what the jury's verdict is and I haven't any more right to assume it than the District Attorney here.

The Court: Go ahead.

Mr. Blue: All right. At the same time Mr. Hanson asked the Court to distinguish for the jury the various counts of the indictment, as to which counts were mail fraud and which counts were Securities and Exchange Act violations, and what count was conspiracy; at the same time Mr. Hanson asked the Court whether or not

these defendants could be convicted on certain counts and acquitted on other counts; at the same time Mr. Hanson said that certain instructions that were given were uncertain in the jury's minds.

The Court: I don't remember that.

Mr. Blue: And one of the jurors asked for instructions. I think the record will bear me out. One of the jurors asked for instructions, and a juror, a Miss Campton or Mrs. Campton, [259a] then stated that she was familiar with the instructions that the Judge had given; the Judge gave instructions consuming in the aggregate about 50 minutes, and Miss Campton, whom I noticed at the time the Judge was giving instructions, had no means of having the instructions so that she could act, let us say, as an *ex officio* judge.

Mr. Manster: I object to this criticism of the jury and I think that counsel perhaps inadvertently is incorrectly paraphrasing what happened. Now, what happened is this, your Honor—

Mr. Blue: The record speaks for itself.

The Court: The record speaks for itself.

Mr. Blue: If anything I say is not in the record, that is fine—

The Court: It is in the record.

Mr. Blue: I further state to the Court that at the time that the jury went out one of the jurors asked whether or not a copy of the instructions should be given. A copy of the instructions was not given to the jury. At the same time yesterday that the jury was in, the jury—I withdraw that—the Judge said, 'Well, I don't think it would be necessary to read all these instructions again. It would take about an hour.'

Now, I say this to the Court, that where jurors—

The Court: State your motion.

Mr. Blue: My motion—

The Court: Don't argue.

Mr. Blue: All right, my motion is based on this—my motion is to withdraw a juror and declare a mistrial on this ground, that on the preamble of what took place yesterday, the verdict that was arrived at was arrived at by speculation, it was arrived at without knowledge, and the fact that one juror did not understand or remember the instructions is sufficient [259b] to say that the verdict, whatever it may have been, was arrived at by speculation, by conjecture, by guesswork, and by prejudice.

In the second place, the jurors showed by the fact that they did not even understand the statute upon which the fundamental basis of this charge was made, and that at their request it was not read back to them, the rights of these defendants, whatever they may be—because I don't know whether this verdict was one of acquittal or one of guilty and we have no way of knowing, but assuming—

The Court: Finish your motion.

Mr. Blue: All right. I say to the Court that in view of these circumstances, these defendants have been deprived of a fair and impartial verdict by this jury and I ask for a mistrial.

The Court: Well, you will recall that the Court was not advised that the reporter had transcribed his notes. Now, the only way the instructions could be read, if they had not been transcribed, was for the reporter to read them. When I learned that he was prepared to read the instructions I asked the jury if they would like to have them read and they said no. Wasn't that what you said?

Mr. Manster: That is correct.

A Juror: We didn't need them then.

Mr. Blue: Mrs. Campton might not have needed them.

The Court: There was only one other juror asked for them.

A Juror: We had already reached a decision with the exception of one juror.

Mr. Manster: If your Honor please, the record shows that you asked the foreman of the jury on two occasions whether the jury wanted any portion of your instructions reread and on [259c] both of these occasions he stated no, and I think that is in the record.

The Court: Wasn't that your statement, Mr. Foreman?

Foreman Hanson: Am I allowed to say anything?

The Court: Yes.

Foreman Hanson: If we were confused, if Mr. Blue wants to put it that way, you straightened us out. We wanted to know which counts were mail fraud and which counts were the—

The Court: That was the portion of the instructions you wanted read?

Foreman Hanson: The minute you told us that we knew what we wanted to know.

The Court: Have you agreed on a verdict?

Foreman Hanson: Yes, sir.

Mr. Blue: I take an exception to the Court's ruling.

The Court: Yes.

(A sealed verdict was handed to the Court.) (Tr. 1704-1708) [259d]

(Title of Cause)

It Is Hereby Stipulated and agreed by and between the above named parties through their respective attorneys, that the time within which the defendants and appellants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, may prepare, serve and settle a proposed Bill of Exceptions herein, and to prepare, serve and file their Assignments of Error, all in connection with the appeal in the above entitled action, may be extended to and including the 5th day of October, 1944.

Dated: August 19, 1944.

DAVID H. CANNON and
BEN L. BLUE

By David H. Cannon

Attorneys for Defendants and Appellants

CHARLES H. CARR

U. S. Attorney

LLEWELLYN J. MOSES

Ass't. U. S. Attorney

JAMES M. EVANS

Special Assistant to U. S. Attorney

S. MANSTER

Special Assistant to U. S. Attorney

By James M. Evans

Attorneys for Plaintiff and Appellee.

It Is So Ordered: This 22 day of August, 1944.

DAVE W. LING

United States District Judge [259e]

(Title of Cause)

It Is Hereby Stipulated and agreed by and between the above named parties through their respective attorneys, that the time within which the defendants and appellants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, may prepare, serve and settle a proposed Bill of Exceptions herein, and within which to prepare, serve and file their Assignments of Error, all in connection with the appeal in the above entitled action, may be extended to and including the 20th day of October, 1944.

Dated: September 12, 1944.

DAVID H. CANNON and
BEN L. BLUE

By David H. Cannon
Attorneys for Defendants and Appellants

CHARLES H. CARR
U. S. Attorney

LLEWELLYN J. MOSES
Ass't. U. S. Attorney

JAMES M. EVANS
Special Assistant to U. S. Attorney

S. MANSTER
Special Assistant to U. S. Attorney

By James M. Evans
Attorneys for Plaintiff and Appellee.

It Is So Ordered: This 18 day of September, 1944.

DAVE W. LING

United States District Judge [259f]

(Title of Cause)

State of California

County of Los Angeles—ss:

David H. Cannon, being duly sworn, deposes and says:

That he is one of the attorneys for the above-named appellants; that a stipulation is now on file between the attorneys for the above-named parties under which it is agreed that the appellants herein may, with the consent of the Court, have to and including November 10, 1944 within which to prepare, serve and file a proposed Bill of Exceptions herein, and within which to prepare, serve and file their Assignments of Error herein.

DAVID H. CANNON

Subscribed and sworn to before me this 20th day of October, 1944.

REED E. CALLISTER

Notary Public in and for the County of Los Angeles,
State of California.

It Is So Ordered That Such Extension of Time Be
Granted.

Dated: October 20th, 1944.

WILLIAM DENMAN

ALBERT LEE STEPHENS

United States Circuit *Judge* [259g]

[Title of District Court and Cause.]

To:

Charles H. Carr, Esq., United States Attorney
L. J. Moses, Esq., Assistant United States Attorney
James M. Evans, Esq., Special Attorney
S. Manster, Esq., Special Attorney

Sirs:

You will please take notice that the foregoing constitutes and is the proposed Bill of Exceptions of the Defendants and Appellants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, in the above entitled action, and that said defendants and appellants will ask the allowance of the same.

DAVID H. CANNON

Attorney for Defendant and Appellant,
James H. Collins

DAVID H. CANNON and
BEN L. BLUE

By David H. Cannon

Attorneys for Defendant and Appellant,
Sidney Fischgrund

BEN L. BLUE

Attorney for Defendant and Appellant,
Christopher E. Schirm [260]

[Title of District Court and Cause.]

It Is Hereby Stipulated that the foregoing Bill of Exceptions is correct and that the same be settled and allowed by the Court.

CHARLES H. CARR, Esq.

United States Attorney

L. J. MOSES, Esq.

Asst. United States Attorney

JAMES M. EVANS, Esq.

Special Attorney

S. MANSTER, Esq.

Special Attorney

By James M. Evans

Attorneys for Plaintiff and Appellee

DAVID H. CANNON

Attorney for Defendant and Appellant,
James H. Collins

DAVID H. CANNON and

BEN L. BLUE

By David H. Cannon

Attorneys for Defendant and Appellant,
Sidney Fischgrund

BEN L. BLUE

Attorney for Defendant and Appellant,
Christopher E. Schirm [261]

[Title of District Court and Cause.]

APPROVAL OF BILL OF EXCEPTIONS

This Bill of Exceptions having been duly presented to the Court, and having been amended to correspond to the facts, is now signed and made a part of the record in this case, and said Bill of Exceptions contains all of the evidence submitted to the trial court, except certain exhibits offered and received in evidence, but which said last-mentioned exhibits are, under Stipulation of counsel, epitomized in said Bill of Exceptions, and the originals of which are transmitted to the Appellate Court; and said foregoing Bill of Exceptions is settled and allowed, all within the time fixed by proper Orders of court.

Dated: October 28, 1944.

DAVE W. LING

Judge

Received copy of the within Bill of Exceptions this 13th day of September, 1944. James M. Evans, on Behalf of Attorneys for Plaintiff.

[Endorsed]: Lodged Sep. 13, 1944. Filed Oct. 30, 1944. [262]

[Endorsed]: No. 11037. United States Circuit Court of Appeals for the Ninth Circuit. James H. Collins, Sidney Fischgrund and Christopher E. Schirm, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed May 11, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11037

JAMES H. COLLINS, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL AND DESIGNATION OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF.

To the Clerk of the Above Entitled Court :

In accordance with Sub-division 6 of Rule 19 of the above entitled court, you are hereby advised that the appellants herein adopt as their points on appeal, the Assignments of Error appearing in the transcript of the record, and said appellants hereby designate for printing the entire transcript of the record as certified to you.

Dated: May 31, 1945.

DAVID H. CANNON

BEN L. BLUE

Attorneys for Appellants.

[Endorsed]: Filed Jul. 3, 1945. Paul P. O'Brien,
Clerk.